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Sup Ct.

Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 95

AIRCRAFT & DIESEL EQUIPMENT CORPORATION,
APPELLANT,

vs.

MAURICE HIRSCH, E. D. McDOUGAL, JOHN R. PAUL, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

FILED MAY 1, 1946.

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VOL. I

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[fol. a] [Caption omitted]

[fols.1-81]

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 28999

AIRCRAFT & DIESEL EQUIPMENT CORPORATION, a Corporation, 4401 North Ravenswood Avenue, Chicago, Illinois, Plaintiff

vs.

MAURICE HIRSCH, Room 3D-624 Pentagon Building, Washington, D. C.; W. JOHN KENNY, Room 102-718 18th Street, Washington, D. C.; JOHN R. PAUL, Room 512-1200 15th Street, Washington, D. C.; H. C. MAULL, JR., 5404 Procurement Building, 7th Street, S.W., Washington, D. C.; GLADDING B. COIT, 811 Vermont Avenue, N.W., Washington, D. C.; CARMAN B. BLOUGH, Department 1400 of War Production Board, Fourth Street and Independence Avenue, S.W., Washington, D. C., As members of and purporting to constitute a purported agency of the United States of America, The War Contracts Price Adjustment Board; HENRY L. STIMSON, Secretary of War, 3000 Cathedral Avenue, Washington, D. C., As Secretary under the provisions of the Renegotiation Act, and ROBERT P. PATTERSON, Under Secretary of War, 1545 35th Street, N.W., Washington, D. C., As delegate of the War Contracts Price Adjustment Board or as delegate of Henry L. Stimson, Secretary of War, or both, Defendants.

[fol. 82] [File endorsement omitted]

[Title omitted]

MOTION FOR PRELIMINARY INJUNCTION—Filed May 19, 1945

Now comes Aircraft & Diesel Equipment Corporation, plaintiff in the above-entitled cause, by its attorneys below-named, and moves the Court:

1. For a preliminary injunction against the defendants and each of them, their servants, agents, assistants, depu-

ties, employees and attorneys and all persons acting or assuming to act under their direction enjoining and restraining them, until further order of this Court from:

(A) Instructing or requesting any customer of plaintiff or person who has contracted with plaintiff to withhold any moneys due or to become due to plaintiff from such customer or person;

(B) Proceeding in any manner, directly or indirectly, to enforce or attempt to enforce the determination and order of January 11, 1945; an application to review which was denied, and which became final on to-wit May 3, 1945, either by the methods of enforcement sought to be provided by said Renegotiation Act, or by any other method; or from in any way hindering, obstructing, interfering or intermeddling with any of the business or transactions of plaintiff or otherwise, to obstruct, harass, or interfere with the plaintiff in the free and unhampered carrying on, operation and conduct of its said business.

[fols. 83-91] 2. That such preliminary injunction be continued in force until further hearing and determination of this cause and until determination by the Tax Court of the United States of the plaintiff's liability under the Renegotiation Act.

3. That upon final hearing of this cause a permanent injunction herein be issued.

As grounds therefor, plaintiff states that this motion is made upon the grounds of the facts set forth in plaintiff's verified complaint on file herein and for the reason that, as applied to plaintiff or its business, said Renegotiation Act is unconstitutional and void as being unauthorized and violative of the Constitution of the United States and upon the fact that unless the defendants are restrained pending the determination by this Court of the constitutionality of the Renegotiation Act, the constitutionality of the Renegotiation Act as applied to this plaintiff, and the determination of plaintiff's petition for redetermination of alleged excessive profits by the Tax Court of the United States from proceeding to enforce said Unilateral Determination set forth in plaintiff's verified complaint that plaintiff will suffer irreparable injury for which it has no plain, speedy or adequate remedy at law.

This motion is made and based upon all of the pleadings, papers, records, and files in this action.

Gallagher, Rincker, Wilkinson & Hall, By Arthur R. Hall, 231 S. LaSalle Street, Chicago 4, Illinois; Hill & Crenshaw, By Francis W. Hill, Jr., Woodward Building, Washington 5, D. C., Attorneys for Plaintiff.

Served a copy of the within above motion notice on within named defendants Henry L. Stimson, Secty. War; Robert P. Patterson, Under Secty. War, both by serving Col. M. G. White, J. A. G. office, personally 5-19-45.

C. Michael Kearney, U. S. Marshal in and for the District of Columbia, By Edgar J. McCloy, Jr., Deputy U. S. Marshal.

U. S. Marshal's Fee—$4.00.

[fol. 92] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTIONS TO DISMISS THE COMPLAINT AND FOR SUMMARY JUDGMENT—Filed June 11, 1945

Come now the defendants by their attorneys herein and move the Court to dismiss the complaint on the grounds that:

(1) the Court lacks jurisdiction over the subject matter of the action;

(2) the complaint fails to state a claim against the defendants upon which relief can be granted;

(3) the complaint fails to state a claim for declaratory judgment or for injunctive relief;

(4) the Court lacks jurisdiction to consider in this case any issue as to the amount, if any, of excessive profits realized by plaintiff.

In the alternative defendants move for summary judgment on the grounds set forth above and on the further

ground that there is no genuine issue as to any material fact and defendants are entitled to judgment as a matter of law.

[fol. 93] These motions are based upon the affidavits attached hereto and the pleadings, files and records in this case.

Dated: June 11, 1945.

(s) Francis M. Shea, Assistant Attorney General; Edward M. Curran, United States Attorney, Attorneys for Defendants.

Of Counsel: Arnold Levy, Special Assistant to the Attorney General; Walker Lowry, A. Morris Kobrick, Attorneys, Department of Justice.

[fol. 94] [File endorsement omitted]

In United States District Court

[Title omitted]

Affidavit of Robert P. Patterson—Filed June 11, 1945

[fol. 95] Robert P. Patterson, being duly sworn, deposes and says:

1. I am Under Secretary of War of the United States and have held that office, which was created by the Act of December 16, 1940, 54 Stat. 1224, since December 19, 1940. From July 30, 1940 to December 19, 1940 I was The Assistant Secretary of War.

2. By authority of various statutes and by various delegations of authority from The Secretary of War, I am, and have been both as Under Secretary and as The Assistant Secretary of War, charged with the supervision of the procurement of all military supplies and of other business of the War Department and the Army pertaining to production and procurement.

3. The statements made in this affidavit are based upon information acquired by me in my official capacity and which I believe to be true and accurate.

Preliminary Statement

4. Wartime procurement for the military establishment differs radically from procurement in times of peace. Speed in production at once becomes all-important. Industry is called upon to produce an entire complex of new products, constantly changing in design and purpose. Quantities of both old and new products, far beyond those previously manufactured, are suddenly demanded, and in the shortest possible time. For the production of these needed items, [fol. 96] existing plants, machinery and equipment have to be converted from producing peacetime civilian goods to meet the different and expanded needs of the armed forces. Even the marginal producers have to be used in order to meet these needs. In addition, hundreds of new plants, new machinery and new equipment have to be constructed, installed, and put to work. The nation's manpower has to be reallocated, almost overnight, to adjust to the gaps caused by the transfer of millions from production to the armed forces, and to the springing up of new industries and new areas of production. Enormous dislocations in transportation, and in the supply of raw materials have to be ironed out.

5. The necessary result of this combination of circumstances is that the war procuring agencies cannot use normal methods of procurement. The pressing need for speed requires the abandonment of drawn-out negotiation and the careful surveys of all relevant factors which sound purchasing would otherwise require. Competition necessarily wanes and no longer offers an adequate guide to the prices which should be paid. Above all, the forecasting of costs of production becomes, in large measure, a matter of informed guessing rather than of real cost analysis. This is true in the case of new products, new plants, and new producers; it is likewise true, though perhaps in lesser degree, wherever the quantities to be manufactured are sharply increased over pre-war amounts. Accordingly, advance prices quoted in good faith by manufacturers in a large number of cases have little relation to costs actually experienced in the course of production. Furthermore, many manufacturers feel unable to quote firm prices without including reserves to cover many contingencies the occurrence of which

[fol. 97] might skyrocket their costs, and so overturn all their estimates.

6. These were the conditions of wartime procurement, after December 7, 1941, and the War Department had to force its procurement activities into their mold. Efforts were made, of course, to develop contractual devices which would minimize the paramount difficulty in estimating production costs. The cost-plus-fixed-fee contract was used where unavoidable, but this form has the disadvantage of removing financial incentives to efficiency and of imposing a heavy burden of auditing upon the Government and the contractor. Escalator clauses, permitting prices to be adjusted according to fluctuations in indices of labor and material costs, were also used but proved unworkable. Letters of intent, under which manufacture was commenced prior to the negotiation of a formal contract, helped to speed production, but could not, of course, solve the ultimate problem of decreasing costs and preventing excessive profits.

7. Shortly after the declarations of war, both the legislative and the executive branches of the Government realized that excessive wartime profits were certain to accrue unless counter measures were taken. The evil effect of such wartime excessive profit on the morale of the fighting forces and the civilian population, as well as the unnecessary financial burden upon the Government, could not be ignored. The example of the last war was still fresh. Many war contractors realized the dangers and inequities resulting from such excessive profit, and some of them made refunds of excessive profits or voluntarily reduced their prices. In the spring of 1942, the War Department developed cost analysis units to check, so far as practicable, on production costs, and set up a price adjustment board to negotiate with [fol. 98] contractors for voluntary price reductions and refunds of past payments. Tentative policies as to what profits were excessive were established and meetings with contractors had. At the same time, there came into use contract clauses providing for the renegotiation or redetermination of contract prices after an initial period of production had laid a basis for the proper estimation of costs. We hoped that these means would keep incentives to efficiency alive and at the same time would tend to eliminate undue profits such as were then coming to light.

8. The Congress apparently felt, however, that these contractual measures, resting as they did upon the voluntary cooperation of a relatively small number of war contractors, did not provide enough certainty that excessive profits would be eliminated. The Vinson-Trammel Act, limiting profits on aircraft and ship construction, had been repealed in 1940, but an effort was made to revive it. In March, 1942, the War Department and the War Production Board opposed such legislation on the ground that a flat percentage profit limitation would impede production and would be unfair to many contractors and too generous to others. After the Case amendment imposing such a flat percentage limitation on profits from war contracts had been adopted by the House of Representatives late in March, 1942, the armed services and the War Production Board offered a substitute proposal giving statutory authority to the process of voluntary renegotiation which had been developing. Congress adopted the principle of renegotiation with which the armed services were in accord (rather than the principle of a flat percentage limitation of profits), and it also endowed the procuring agencies with power to determine [fol. 99] excessive profits when no bilateral agreement could be reached with the contractor. I believe that this addition by the Congress of the power of unilateral action was a wise and a necessary one, and that without it renegotiation would not have accomplished anything like the results that have been achieved.

9. The purpose of this affidavit is to present the facts showing in greater detail, (a) the nature and extent of the procurement problems of the Army after the declaration of war, (b) the need for renegotiation and limitation of profits of war contractors and the steps which had been taken in that direction prior to the enactment of the renegotiation statute, and (c) what statutory renegotiation has accomplished.

The Army's Procurement Problems Subsequent to the Declaration of War

10. Immediately after the attack on Pearl Harbor, on December 7, 1941, the War Department's procurement program was sharply accelerated to meet the new requirements imposed upon the country and the Army by the sudden involvement of the United States in the war. The

defense procurement program had been large, but the effort was minor in comparison with that necessitated by the demands of active warfare. Supplies, equipment, housing, ammunition, and weapons had to be secured, in the least possible time, for our rapidly expanding armed forces, and for the anticipated needs of a war to be fought on two sides of the globe. In addition, increased supplies for the nations with which we were allied had to be produced with the greatest possible speed. All phases of procurement were stepped up: production of the weapons of war, such as guns, planes, tanks; construction and equipping of camps; procurement of equipment and supplies for the troops; construction of plant facilities; production of the [fol. 100] means of communication and transportation.

11. The extent of the problem facing the procurement agencies can be judged from the goals set by the President in his message to Congress of January 6, 1942. The President stated:

> I have just sent a letter of directive to the appropriate departments and agencies of our government ordering that immediate steps be taken:
>
> First to increase our production rate of airplanes so rapidly that in this year 1942 we shall produce 60,000 planes, 10,000 by the way, more than the goal that we set a year and a half ago. This includes 45,000 combat planes, bombers, dive bombers, pursuit planes. The rate of increase will be maintained, continued, so that next year, 1943, we shall produce 125,000 planes, including 100,000 combat planes.
>
> Secondly, to increase our production rate of tanks so rapidly that in this year, 1942, we shall produce 45,000 tanks, and to continue that increase so that next year, 1943, we shall produce 75,000 tanks.
>
> Third, to increase our production rate of antiaircraft guns so rapidly that in this year, 1942, we shall produce 20,000 of them, and to continue that increase so that next year, 1943, we shall produce 35,000 antiaircraft guns.
>
> And fourth, to increase our production rate of merchant ships so rapidly that in this year, 1942, we shall build 8,000,000 deadweight tons, as compared with a 1941 completed production of 1,100,000. And finally,

we shall continue that increase so that next year, 1943, we shall build 10,000,000 tons of shipping.

Illustrative of the tremendous undertaking facing both American industry and the procurement agencies is the fact that the total number of planes (military, commercial, and private) produced from 1903 to 1940 was some 33½ [fol. 101] percent less than the number scheduled for the year 1942 alone, and that procurement of planes for the Army during 1942 was over 250% greater than in 1941. For the fiscal year ending June 30, 1942, the money appropriated for War Department procurement and construction was more than six times the amount appropriated in the fiscal year 1941. One-third of the total was appropriated by the Congress in the first half of the fiscal year 1942, before the United States had been attacked; after Pearl Harbor, the Congress tripled the new procurement funds made available earlier in the fiscal year.

12. To fulfill the requirements of this expanded war program, a vast number of contracts had to be made, as quickly as possible, for supplies, weapons, and munitions of all kinds. Attached as Exhibit A is a chart (based on information furnished by the War Production Board) showing the number and dollar value of contracts for all types of war materials entered into each month from July 1941 through June 1942 by the various procuring agencies. The tremendous increase which occurred in January 1942 and continued through the remaining months of that fiscal year is clearly shown by this chart. In November, 1941, the total dollar value of such contracts was $1,506,000,000; in December it jumped to $3,131,000,000; and in January 1942 to $9,456,000,000; in the remaining months of the fiscal year it never fell below $4,800,000,000. The chart, it should be noted, understates both the total number of contracts and their total dollar value, since it excludes (1) contracts with a value of less than $50,000 (of which there were a vast number), (2) contracts for subsistence, and (3) construction contracts. An idea of the comparison between the total number of contracts entered into by the War Department prior to Pearl Harbor and thereafter can be gained from [fol. 102] the fact that the number of contracts for the fiscal year ending June 30, 1941, was 667,364, while that for the four months of July, August, September, and Octo-

ber 1942 alone was 1,408,141. All these figures concern only prime contracts, but the vast stimulating effect of this expanded volume of prime contracts upon subcontracting of all tiers is readily apparent. On December 31, 1941, War Department obligations for supplies and new capital facilities amounted to more than 9 billion dollars, but on June 30, 1942, they amounted to nearly 43 billion dollars. War Department expenditures for delivered supplies were nearly 4 billions on December 31, and were more than 13 billions on June 30. In the last six months of the fiscal year ending June 30, 1942, War Department contractual activity and the delivery of supplies were four times greater than in the first six months. Some conception of the vast scope of the procurement activity of the armed services after the attack on Pearl Harbor can be gained from the fact that the total expenditures of the War and Navy Departments for the one fiscal year ending June 30, 1942 ($22,905,000,000) considerably exceeded the total military and naval expenditures of the Government from 1789 through the end of World War I.

13. To meet these accelerated demands, the armed forces had to call, in largest measure, upon private industry which, prior to December 7, 1941, was devoting only 25% of its total production to defense work, and of this amount, by far the largest proportion resulted from the use of existing idle capacity and the establishment of new facilities rather than from the conversion of existing facilities geared to civilian production. Little stoppage of civilian [fol. 103] production had occurred prior to December 1, 1941. If the imperative needs of the armament program were to be satisfied, wholesale conversion of existing production facilities to a war economy would have to occur. By the end of 1942, the proportion of manufacturing industry devoted to war production amounted to upwards of 45%, and presently this percentage is estimated at 60%. Some of this increase is, of course, attributable to the continued construction and use of new facilities, but the greater part of it has come from conversion of existing facilities since December 1941.

14. The armed forces were thus forced to grapple with major difficulties stemming from (a) the greatly increased demands for supplies of all types, (b) the accelerated pro-

gram requiring immediate production, and (c) the urgent and rapid conversion of the great mass of American industry to war work and the large-scale use of new facilities. Other acute problems were caused by (d) the demand for new products not previously manufactured, and by the constant modification of specifications to reflect improvements in design or changing needs, and (e) by the current uncertainty in the amounts of materiel to be procured, and the grave difficulties in the supply and cost of labor and materiel which were daily arising at that time:

(a) The greatly increased demand for supplies made the accurate forecasting of costs very difficult. Starting costs were bound to be higher than those incurred after mass production had begun; but the extent to which quantity production would bring a sharp drop in costs could not be estimated either by the Government or by contractors, and the latter were naturally very cautious in prophesying about their future costs. This was frequently true in the case of standard articles previously manufactured in small [fol. 104] quantities and was uniformly true in the case of new products.

(b) The urgent need for placing orders and starting production as soon as possible placed the importance of speed far above thorough analysis or careful negotiations. Time was of the essence, and the Government personnel entrusted with negotiation and procurement were, of necessity, too few and too overburdened to follow the normal procedures of careful procurement. There was simply no time to collate and check the cost information which in less abnormal times would be required; and, of course, such cost information pertinent to wartime production was frequently nowhere obtainable.

(c) The conversion of peacetime facilities to war work meant that cost data for the new production were unavailable, even for established plants. And in the hundreds of new plants producing war goods, only the roughest guess as to the costs of manufacturing which would be experienced during actual production could be made. Marginal producers, and those with no experience with the product or with the greatly increased quantities they would be called upon to produce, had to be used.

(d) War on the scale and under the conditions we are fighting calls for unceasing development, production, use,

and improvement of countless new supplies and weapons. The demands of amphibious warfare, for instance, led to the development of amphibian boats and cargo carriers. The mechanization of modern warfare forced the development and rapid production of such items as tanks and motorized gun carriers as well as of the weapons employed against them: anti-tank guns and grenades, armor-piercing ammunition, self-propelled mounts, and anti-aircraft guns. The spurt and rapid changes in aircraft development are [fol. 105] common knowledge, as is the growth of communication and detection devices. Changes in design and material also frequently resulted from shortages of previously used components. The use of steel had to be severely limited wherever a less critical material could be substituted. Motor vehicle cargo bodies, for example, were converted from steel to wood. Acute shortages of copper and brass led to other changes in accepted design. Great use was made of plastics in order to release critical metals. This activity can be partly epitomized in the summary statistic that during the fiscal year 1942 approximately 1,200 Army specifications were reviewed, and revised or approved, and about 425 specifications were completely cancelled.

(e) Material and labor shortages were acute in the spring of 1942. The consequence was that it was generally difficult, except within the widest limits, to establish accurate schedules for the production of supplies. The Army's requirements had to be drastically reduced, in the months from February to June 1942, because of these factors, and these changes and reductions were reflected in the War Department's procurement program. An equally important consequence was the difficulty of gauging both the costs and the time of performance because of the shortages and anticipated rise in the costs of labor and materials

15. All these factors made advance pricing a haphazard process in which the war procurement agencies could put little trust. The situation with which we were faced is well summarized in the following two statements (one by a Government agency and the other by a large war contractor) with which I am in full accord and which I believe to be an accurate description of the procurement situation as it existed after the coming of the war. The following is an excerpt from the Introduction to the Renegotiation Regula-

[fol. 106] tions issued by the War Contracts Price Adjustment Board:

> The war program creates problems of procurement and production unprecedented in scale and complexity. War materials of all kinds are required in enormous quantities with the greatest possible speed. The munitions program expanded with such rapidity that contracting officers were hard pressed to place contracts in time to meet the accelerated requirements. In order to avoid delay, they had to make contracts without adequate data. Obtaining the material was the first issue. Many contractors were asked to produce articles which had never been produced before and which were subject to frequent change. Others were asked to produce articles which were new to them. Still others, who had produced articles in small quantities, were asked to produce them in amounts far beyond their previous experience. Quantities needed, the rates of delivery and specifications had often to be revised in the light of experience and the demands of war. Shortages of material, priorities, and allocations increased the uncertainty of production.
>
> Besides these circumstances, contractors and contracting officers were frequently unable to make an accurate forecast of costs on which to base prices. During the period of transition, costs were certain to be high. New facilities had to be obtained, new personnel employed and trained to new methods and new sources of supply developed. How long this would take was itself uncertain. After the contractor got into production, greater efficiency, improved methods, and increased volume could be expected to reduce costs sharply.

The following are excerpts from a report by the General Motors Corporation, in September 1943, to the War Department Price Adjustment Board:

[fol. 107] With the advent of the war-production program, the automatic check on pricing policy which had been furnished by competition during peacetime could no longer be relied upon. The Corporation was obliged to undertake the manufacture of many products which were entirely foreign to its own past operations. In

many instances, these products had not been produced by any manufacturers in the volume contemplated by the war program. As a result, there was no ready-made yardstick against which the Corporation could measure proposed prices, and it became necessary to rely largely upon the judgment of the several general managers of the operating divisions and the Government contracting officers, as well as whatever limited experience might be available from other producers, as to the reasonableness of the cost estimates and prices submitted. In certain cases, the only practical solution of the pricing problem has been to insert clauses into contracts providing that prices would be reviewed as soon as representative cost experience had been obtained as a result of volume production.

Under these circumstances, it has been impossible to predict with any degree of certainty what the operating results of particular contracts might ultimately be. It therefore became imperative for the Corporation to establish as soon as possible a basic pricing policy which would take into account these unusual conditions and insure that proper and effective pricing control would be obtained. In establishing this policy, the primary considerations were twofold. First, it was recognized that in producing war material, the checks of normal competition had been removed, and that the peacetime conception of desirable profit margins, as previously described, had to be modified. Second, it was considered essential to maintain, as far as possible, the Corporation's normal method of doing business on a decentralized basis, with primary responsi-
[fol. 108] bility for contracting, pricing and production resting upon the divisional general managers, subject to the over-all general policies of the Corporation.

* * *

The policy of taking contracts on a fixed-price basis whenever practicable was adopted (despite the increased risk) because of the greater incentive to efficient operation afforded by this type of contract as compared with the cost-plus-fixed-fee type. However, it was recognized that the divisions were undertaking the production of war materials which were not only new to the Corporation, but had not been manufactured by anyone on a "mass-production" basis. There-

fore, there was always a possibility that initial cost estimates on certain contracts, even though they appeared reasonable to the divisional general managers and the Government contracting officers at the time the estimates were prepared, might turn out to be higher than actual costs of production as volume increased, when designs were changed, and as manufacturing experience was obtained. • • •

16. A graphic illustration of the way in which all the factors of uncertainty listed above combined to make the advance estimation of costs extremely difficult in 1941 and 1942 is furnished by the experience of the General Motors Corporation. That company is one of the largest peacetime manufacturers of automotive products, its accounting and auditing procedures are superior, and its ability to forecast the costs of manufacture of automotive products would far outrun that of most other producers. Nevertheless, as the company itself fully realized (see paragraph 15 above), even it was in no position to estimate its costs with any acceptable margin of accuracy. General Motors accepted contracts containing redetermination provisions, under which an original price based on the best available estimate of costs was established, with revisions made after [fol. 109] the costs of a preliminary run of 1,000 units and a test run of a further 1,000 units were available. The price for the remainder of the contract was determined on the basis of the test run. The results obtained under two of these contracts were as follows:

a. *Medium Tank* (per unit):

Original price (middle of 1941)	$67,401
	Estimated redetermined value
Preliminary run (March 1942-December 1942), 1,000 units (including preproduction expenses)	$50,947
Test run (December 1942-February 1943), 1,000 units	39,079
Remainder (February 1943-August 1943), 1,053 units	39,285

b. *Light Tank* (per unit):

Original price (set during 1941)	$45,000

	Estimated redetermined value
Preliminary run (April 1942-October 1942), 1,000 units	$34,625.99
Test run (October 1942-December 1942), 1,000 units	26,972.96
Remainder (December 1942-February 1943), 1,266 units	28,347.09
2nd Preliminary run (Feb. 1943-June 1943), 1000 units	24,658.65

c. The following table illustrates the sharp decrease in costs following a sharp rise in quantity of production, and the gaining of manufacturing experience. The figures represent revisions of General Motors Corporation's price for the *.50 cal. heavy barrel machine gun:*

	Units	Price
Original price (Aug. 1941-Dec. 1941)	1,308	$868.07
1st revision (Jan. 1942-Mar. 1942)	2,830	632.55
2nd revision (Apr. 1942-May 1942)	3,247	532.00
3rd revision (May 1942-Sept. 1942)	14,717	413.60
10th revision (June 1943-Aug. 1943)	3,500	300.59

17. Faced with these difficulties of estimating production costs and also with the pressing need for speed in procurement, the War Department naturally chose to emphasize, after December 7, 1941, the speedy placing of a mass of contracts. Pressure to obtain supplies was already great before the attack on Pearl Harbor, but thereafter it was [fol. 110] made even clearer to contracting officers that they were expected to place the increasing load of orders assigned to them with the least possible delay. The war would not rest to allow proper negotiation, and the War Department made it clear that the primary goal was speed in obtaining the necessary equipment and supplies. Illustrative is P. & C. General Directive No. 8,[1] issued January

[1] P. & C. General Directives were issued, under my direction, by the Purchases and Contracts Branch of the Office of the Under Secretary of War; this branch later became the Contract Division, and the directives were entitled CD General Directives; in March 1942, the unit became the Purchases Branch, Procurement and Distribution Division, Headquarters, Services of Supply, and the directives were entitled PB General Directives.

14, 1942 (attached hereto as Exhibit B), which stated that "price is a secondary consideration as compared with speed and efficient production," and "speed in placing orders now authorized is important, but speed of production as a whole during the next 18 months is of even greater importance. * * * War calls for the same boldness and imagination in procurement as it does in meeting combat conditions in the field." War Production Board Directive No. 2, March 3, 1942, placed "primary emphasis * * * upon securing delivery in the time required by the war program." P. B. General Directive No. 34, dated April 9, 1942, which coordinated War Department rules concerning purchases, reiterated the WPB standards and added that in giving effect to these policies "it is recognized that it may be necessary to purchase at other than the lowest price offered."

18. To implement this policy of speedy procurement, and at the same time to adjust, as best it could, to the conditions of wartime production, the War Department adopted [fol. 111] several procurement devices and policies.

a. Peacetime War Department procurement, with certain exceptions, was accomplished through advertising for bids. At the beginning of the general emergency it was foreseen that this method would prove impracticable for emergency procurement, and the Act of July 2, 1940 (Public No. 703, 76th Congress) authorized contracting without advertising for national-defense purposes. This authority was widely used for the purchase of such supplies as aircraft and tanks, but in many fields it was believed that the Government could still avail itself of the safeguards of letting contracts by advertising. After the declaration of war, however, it was seen that negotiation would have to supplant advertising almost entirely. The increased need for speed in procurement, the necessity of employing even high-cost producers, the unfamiliarity of most contractors with the products or the quantities they were called upon to manufacture, and all the uncertainties of the period described above, combined to render advertising unsuitable to wartime procurement. Accordingly, on December 16, 1941, the Secretary of War issued a directive broadly extending the authority to make procurements without advertising, and by directive of December 17, 1941 (P. & C. General Directive No. 81) I ordered "that the authority to place orders

without advertising be utilized in all cases where that method of procurement will expedite the accomplishment of the war effort." The First War Powers Act of 1941 (approved December 18, 1941), and Executive Order No. 9001, issued December 27, 1941, confirmed and extended the power to make contracts by negotiation, and thereafter the use of that method became dominant in Army procure-
[fol. 112] ment. On March 3, 1942, War Production Board Directive No. 2 required all of our war contracts to be negotiated (unless specific authority to advertise were granted), and on March 4, 1942, this rule was made effective in the War Department by CD General Directive No. 25.

b. Speed in procurement and the utilization of all available producing facilities required decentralization of procurement, increased subcontracting, and widespread distribution of war orders. (1) Prior to December, 1941, considerable decentralization had been effected; the limits of the dollar amounts of contracts which could be approved by echelons below the office of the Under Secretary of War had gradually been raised to $500,000. On December 16, 1941, the Secretary of War directed a sweeping decentralization of procurement, and on the next day I issued P. & C. General Directive No. 81, empowering the chiefs of the supply arms and services to approve contracts up to $5,000,000, and authorizing them to decentralize still further. This directive stated that "In order to enable orders to be placed in the quickest possible time, it is desired that chiefs of supply arms and services decentralize to their field agencies the actual work of procurement and the placing of awards and contracts to the greatest extent compatible with efficiency and proper safeguarding of the public interest." (2) Subcontracting had also been fostered from the beginning of the emergency, since it was foreseen that full defense production could not otherwise be achieved. With the outbreak of the war, P. & C. General Directive No. 8, dated January 14, 1942 (Subject: "Selection of Contractors for war production"), strongly emphasized this need and required procurement officials to insist upon subcontracting: "The heavy procurement program and need for speed in production make vital the best utilization of
[fol. 113] every facility." (3) For the same reasons, the policy of the widespread distribution of defense orders was adopted. This policy was partially crystallized in War Pro-

duction Board Directive No. 2, March 3, 1942, which stated "that contracts shall be placed so as to conserve, for the more difficult war-production problems, the facilities of concerns best able, by reason of engineering, managerial, and physical resources, to handle them. Accordingly, contracts for standard or other items which involve relatively simple production problems shall be placed with concerns, normally the smaller ones, which are less able to handle the more difficult war-production problems."

c. Letters of Intent were used early in the emergency to expedite production. Through use of this form of contract, the contractor could begin manufacturing the needed supplies before agreement had been reached on a definite price, or the full extent of the procurement determined. The slightly different letter contract form was authorized in May and June 1941, for the same purpose. On December 17, 1941, there was issued at my direction, P. & C. General Directive No. 88, which ordered the more extensive use of letter contracts "in the interest of expediting procurement." On January 16, 1942, revised letter contract forms were issued, and on January 13, 1942, a letter purchase order (to replace the letter of intent) was issued and its use directed by contracting officers "where the necessity for the supplies is so urgent as to render prior negotiations in respect to price, schedule of deliveries, or other terms impracticable, or where negotiations in respect thereto have failed to result in an agreement" (P. & C. General Directive No. 5). These policies were emphasized to the contracting personnel by the various supply arms and services. For [fol. 114] instance, the Signal Corps directed (April 20, 1942) that in no case in which time was of the essence should the selection of a satisfactory contractor be delayed to await agreement on the price; "if immediate agreement cannot be reached on the price, a letter purchase order or a letter of intent should be issued to the contractor selected, so that production can be initiated pending the negotiation of price." Pursuant to these directions, these contract forms were used in great number throughout the War Department.

19. Contractual devices were also adopted in an attempt to overcome the insistence of contractors on covering all the contingencies of wartime production into their prices.

a. One means, of course, of eliminating the probability of excessive profits and of tying the contract price to actual costs is the cost-plus-fixed-fee form of contract. The Act of July 2, 1940, authorized the use of this form, and War Department directives of the same day permitted its use when "deemed necessary in the interest of the United States in order to accomplish or expedite the national defense program." But this form of contract has never been favored by the War Department, for the reasons that it offers no financial incentive to control or reduce costs and that it requires an inordinate amount of auditing and paper work. However, its use was found necessary in some cases. P. & C. General Directive No. 81, dated December 17, 1941, provided that "contracts will be negotiated on a cost-plus-a-fixed-fee basis only when the use of that form of contract is essential." Later directives have continued and strengthened that policy and have consistently urged the conversion of cost-plus-fixed-fee contracts to the fixed-price basis.

[fol. 115] b. Another attempt to meet the objections of suppliers who felt that they could not quote firm prices because of anticipated rises in material and labor costs, were escalator—price adjustment clauses. On September 17, 1941, the War Department approved a price adjustment (escalator) article to be used "only in exceptional cases where the facts justify their use." (P. & C. General Directive No. 48). It was expressly required that all contracts containing the escalator clause also include an article providing for termination of the contract for the convenience of the Government. On December 17, 1941, P. & C. General Directive No. 86 issued certain amendments, mainly concerning indirect labor and material costs, to the approved clauses. Copies of these two directives (including the escalator clauses) are attached hereto as Exhibits C and D. Escalator clauses present some of the undesirable features of cost-plus contracts. Their administration is complex, and they require extensive accounting and auditing.

These devices were not favored by the War Department, for the reasons I have stated. By themselves, they were not satisfactory or effective methods for confining profits to reasonable levels or for decreasing production costs. Other means of attaining these ends had to be developed.

Need for Renegotiation and Profit Limitation and Measures to That End

20. At the beginning of the limited emergency in 1939, the only applicable statutory limits on profits from the sale of military or naval supplies were contained in the Vinson-Trammel Act of March 27, 1934, as amended (relating to naval vessels) and the Merchant Marine Act of 1936, as [fol. 116] amended (relating to construction of merchant ships). The Act of April 3, 1939, extended percentage profit limitation to cover Army aircraft contracts. The percentage of profit allowed to contractors was lowered to approximately 8% by the Act of June 28, 1940, but the Second Supplemental National Defense Appropriation Act, 1941, enacted September 9, 1940, provided that as to aircraft the old limitation of 12% was to prevail.

21. Manufacturers of war products, particularly aircraft manufacturers, asserted that they could not take Government contracts in the face of these profit limitations. Many subcontractors were reluctant to work for them under Government prime contracts at 8% or 12% when they could make 15% or 20% working for civilian manufacturers. Moreover, many subcontractors were unwilling to take contracts which involved the necessity of keeping elaborate cost records subject to Government audit. It was therefore decided that the Vinson Act would have to be suspended, and that an excess profits tax should be levied. Accordingly, the Second Revenue Act of 1940, containing the excess profits tax, suspended the profit limitation statutes applicable to Army and Navy contracts entered into after December 31, 1939, or uncompleted on that date by contractors and subcontractors subject to the new excess profits tax. Thereafter, until the passage of the Sixth Supplemental National Defense Appropriation Act of 1942, the only statutory provisions concerning war or defense contracts were those of the excess profits tax.

22. From the beginning of 1942, officials of the War Department were aware that a necessary result of the unstable purchasing conditions of war procurement would be the accumulation by many contractors and subcontractors of [fol. 117] excessive profits which would not be siphoned off by the existing tax legislation. Publication of financial reports of war contractors for 1941 indicated the tremen-

dously increased profits derived from the more limited defense program. The decision of the Supreme Court in *United States* v. *Bethlehem Steel Corporation,* 315 U. S. 289, decided in February 1942, reemphasized the extent of the profits which had been made in World War I. On March 23, 1942, the Naval Affairs Committee of the House of Representatives conducted a hearing on the defense profits of Jack & Heintz, Inc. (Hearings before the Committee on Naval Affairs, House of Representatives, 77th Cong., 2d Session, pursuant to H. Res. 162, Vol. 1), and the information divulged at that hearing on the exorbitant profits made by that concern received wide publicity. Other information of the same character was developed by the Naval Affairs and other Congressional Committees and was made available to the War Department. The War Department and at least one of the supply services (the Signal Corps) established rudimentary cost analysis units to study the manufacturing cost, of Army suppliers, and preparations were made to review and check contract prices.

23. The need for eliminating excessive profits obtained from war production is as paramount as it is obvious. Excessive profits mean increased tax and war loan burdens on the public and increased pressure toward inflation. Undue profit margins are also a cushion for wasteful and costly manufacture. Perhaps most important is the destructive effect of excessive war profits upon the morale of men in the armed services and of civilian workers. The sharp reaction to war profits which occurred after World War I is eloquent testimony of the significance of this factor.

[fol. 148] Voluntary Renegotiation

24. During the defense period, prior to December 7, 1941, there had been a certain number of voluntary refunds and price reductions by defense contractors. In June and July, 1941, War Supplies, Ltd., the Canadian Government corporation through which the United States purchases in Canada, agreed to refund to the War Department all profits over 10% of cost. In October 1941, it was found advisable to issue a directive on the taxable character of sums received by contractors but voluntarily refunded to the United States. P. & C. General Directive No. 54, October 7, 1941, stated that: "From time to time a contractor with

the Government discovers that his profits are larger than he had at first estimated, and desires to refund the excess to the United States. Under these circumstances, certain contractors have hesitated lest in making the refund they subject themselves to a tax penalty, either through paying or having paid income taxes on the profits received or through being forced to pay a gift tax on any refund." But voluntary renegotiation took on much greater scope in early 1942.

25. On the same day that they appeared before the Naval Affairs Committee (March 23, 1942), officials of Jack & Heintz, Inc. met with procurement officials of the War Department for the purpose of reviewing the Company's Army contracts. It was agreed that the contractor would reduce its prices on its various contracts, totaling somewhat over $50,000,000, by an over-all amount slightly in excess of $10,000,000. On March 28, 1942, our procurement officials met with officials of Continental Motors Corporation to review that company's aircraft contracts. After negotiations, the company voluntarily agreed to reduce its prices on existing contracts by a total of $40,000,000. A third such meeting, on April 6th, with the Sperry Corporation resulted [fol. 119] in a voluntary reduction of about $100,000,000.

26. Other voluntary renegotiations were effected in the first quarter of 1942. A number of contractors expressed their willingness to adjust their prices to reflect actual costs, as they developed, and to restrict their profits to proper wartime levels.

a. Prior to May, 1942, General Motors Corporation had made voluntary price reductions running into more than $200,000,000, according to its own figures. One example follows: In a contract made in August 1941 for 8,000 aircraft engines, the Allison Division of General Motors included contingency reserves in the unit prices but stated that if excessive profits developed during the course of performance it would be willing to grant reductions on undelivered engines. In December 1941 and January 1942, the War Department received information that costs were lower than anticipated. Renegotiation discussions were begun with the contractor, and on March 30, 1942, it offered to refund approximately $20,000,000 to the Government.

b. In June 1941, Republic Aviation Corporation undertook to manufacture 125 P-43A airplanes, over a period of some ten months, at a stated unit price. The Government's negotiators believed that the agreed price might lead to excessive profits. The contractor's representatives, though believing that the price was not too high, orally agreed that if profits in excess of 10 or 11 percent were made, the company would either voluntarily reduce its contract price or would construct an experimental plane for the Government without cost. On December 10, 1941 the contractor informed the Government that its profit on the contract would probably exceed the stipulated amount and suggested that it [fol. 120] furnish the experimental airplane. The War Department was not interested in the experimental airplane, and after further cost figures indicating excessive profits became available, the contractor offered an acceptable voluntary price reduction of $1,445,370.00.

c. In April 1942, information became available that Beech Aircraft Corporation was making a profit of approximately 33% on its airplane contracts. On April 16th and 17th the Company agreed to review the contract prices, and shortly thereafter price reduction agreements were consummated.

d. Similarly, in April 1942 discussions were begun with Cessna Aircraft Corporation, Bendix Aviation Corporation, and some other contractors, which resulted in price reductions.

27. In March 1942, the War Department determined to establish formal price renegotiation machinery, and plans were drawn for a Price Adjustment Board to negotiate with contractors for reduced prices where excessive profits had been or were likely to be secured. On March 27, 1942 there was prepared in the War Department a tentative memorandum outlining the policy and procedure of the putative War Department Price Adjustment Board. The purpose of the Board, its operating policies, and method of operations were set forth, as well as a list of factors to be considered in determining the reasonableness of profits. A copy of this memorandum is attached as Exhibit E. To be noted is the similarity between the factors listed as governing profit reasonableness in this memorandum, in the Joint Statement by the War, Navy, and Treasury Departments and the Maritime Commission, dated March 1943, and in the Renego-

tiation Act, as amended and reenacted in the Revenue Act of 1943. This memorandum of March 27th was not published nor was it issued officially, but use was made of it in voluntary renegotiations conducted by the War Department. At the meeting of March 28th with Continental Motors Corporation (see paragraph 25 above) this memorandum was read to the contractor's representatives as a preliminary and tentative statement of War Department policy on excessive profits.

[fol. 121]

28. Title XIII of the Second War Powers Act, enacted March 27, 1942, conferred upon the Government authority to inspect the plants, books, and records of war contractors. On April 10th, the President issued Executive Order 9127 ("Designating the Departments and Agencies to Inspect the Plants and Audit the Books and Records of Defense Contractors under Title XIII of the Second War Powers Act, 1942") in order "to prevent the accumulation of unreasonable profits, to avoid waste of Government funds, and to implement other measures which have been undertaken to forestall price rises and inflation." Under this order, the cost analysis units in the War Department were expanded and strengthened, and a new basis was laid for price adjustment boards.

29. The Under Secretary of War, the Under Secretary of the Navy and the Chairman of the Maritime Commission (with the approval of the Chairman of the War Production Board) agreed to establish price adjustment boards within the three agencies in order to advise and assist procurement officials "in securing adjustments or refunds in instances where it is determined that costs or profits of contractors are, or may be, excessive for any reason." A copy of this memorandum is attached as Exhibit F. Plans for such a board in the War Department had been proceeding meanwhile and on April 25th, Lieutenant General Brehon Somervell, Commanding General of the Services of Supply, formally established such a price adjustment board, with my [fol. 122] approval. A copy of his memorandum is attached as Exhibit G.

30. A corollary to the establishment of these procedures for voluntary renegotiation, without specific contractual or statutory basis, was the development of contract clauses looking toward the renegotiation or redetermination of

prices after partial or complete performance. The problem was submitted to a committee of representatives of the War Production Board, the War Department and the Navy Department and resulted in the preparation of two contract clauses. One, known as the "redetermination clause," was designed to permit automatic adjustment downward in price on the basis of actual cost experience during a "test run" early in the performance of the contract. The other contract provision, originally known as the "renegotiation clause," was designed to permit adjustment of the price either upward or downward in the light of actual cost experience after part performance, as soon as reasonably reliable cost estimates were feasible. These articles were promulgated for use in War Department contracts by P. R. General Directive No. 31, dated March 13, 1942, a copy of which is attached as Exhibit H. One of the purposes of the new clauses can be gained from the opening statement of the directive that "It is essential to eliminate all delays in the production of items immediately required which result from the time required for the negotiation of fixed price contracts."

Statutory Proposals

31. The Congress was, of course, also concerned with the probability that excessive profits would be made by many war contractors, despite the excess profits tax. The disclo- [fol. 123] sures at committee hearings and the profit information available was thought to require legislative action. In March 1942, a bill was introduced to establish a rigid profit limitation of 6% on war contracts. On behalf of the War Department, I opposed this proposal before the Committee on Naval Affairs of the House of Representatives (March 19, 1942), and Mr. Donald Nelson opposed it on behalf of the War Production Board (March 24, 1942). (Hearings before the Committee on Naval Affairs, House of Representatives, 77th Cong., 2nd Session, on H. R. 6790, pp. 2473-2475, 2577-2578.) Mr. Nelson and I pointed out that the bill, if enacted, was likely to interfere with war production, especially by delaying the conversion of small business to war work and also by forcing the increased use of the cumbersome and wasteful cost-plus-a-fixed-fee contract. We also pointed out that a fair percentage of profit was not solely a function of the cost of performance but depended upon such factors as turn-over, volume of busi-

ness, amount of invested capital, financial structure, time of performance, and contribution to increased efficiency. Depending upon these factors, and particularly upon dollar volume of business, a 6% profit might be far too large or far too small. Attention was also called to the impossibility, under the flat percentage system, of allowing the recoupment of losses. At the same time, I stressed to the Committee that the War Department recognized its "plain duty to take every practicable step to prevent contractors from obtaining excessive and unconscionable profits," and I described the cost analysis and price adjustment projects which were then being formulated (see pars. 27-29 above), and the price redetermination and revision clauses which [fol. 124] had been authorized (see par. 30 above). This profit limitation bill, to which I expressed the War Department's opposition, was not acted upon by the House of Representatives.

32. On March 28, 1942, Congressman Case offered on the floor of the House of Representatives two profit-limitation amendments to the Sixth Supplemental National Defense Appropriation Bill. His first proposal was that no final payment on a war contract be made by the Government "until the contractor shall have filed with the procuring agency a certificate of costs and an agreement for renegotiation and reimbursement satisfactory to the Secretary of War or the Secretary of the Navy, as the case may be." This amendment was subject to a point of order, and Congressman Case then offered a substitute amendment providing that final payment was not to be made "to any contractor who fails to file with the procuring agency a certificate of cost and an agreement for renegotiation of contract and reimbursement of profits in excess of 6 per cent." This amendment was adopted by the House of Representatives without debate. Mr. Case has stated that his proposals were modeled, in part, upon the renegotiation clauses developed by the procurement agencies (see par. 30 above). See Hearings before the Subcommittee of the Committee on Appropriations, U. S. Senate, 77th Cong., 2nd Sess. on H. R. 6868, pp. 89-92, 211-2.

33. At a hearing held on March 31 and April 1, 1942, by a subcommittee of the Senate Committee on Appropriations, on the Sixth Supplemental National Defense Appro-

priations Bill for 1942, representatives of the Government stated the objections to the Case amendment, as it then stood. General Somervell reviewed the factors making adequate pricing impossible in many cases and described [fol. 125] the price adjustment procedures which had already been established in the War Department. The committee was informed that a Cost Analysis Section and a Price Adjustment Board had been set up and were at work and tentative policies and procedures had been laid down (Hearings pp. 24-25). The approved "redetermination" and "renegotiation" contract articles were also described to this subcommittee and their use explained. General Somervell, Mr. Donald Nelson of the War Production Board, and other representatives of the procurement agencies again stated the objections to an inelastic profit-limitation provision of the type of the Case amendment. It was pointed out that the amount and rate of profit should depend—out of fairness to contractors and to furnish the proper incentive to reduce costs—on a number of factors, such as rapidity of turn-over, development costs, production time, money invested in the business, risks incurred, efficiency of production; a flat percentage limitation lumping all contractors together would not only be unfair to many and too generous to others but is subject to the very defects which have placed the cost-plus contract in disfavor; moreover, the statutory percentage of profit which is intended to be a maximum tends to become a minimum and contractors believe that they are entitled to receive that rate of profit.

34. The Senate Subcommittee requested the procurement agencies to supply a substitute for the Case amendment. On April 2, 1942, General Somervell submitted a proposal on behalf of the War and Navy Departments and the War Production Board. A copy of this substitute proposal is attached as Exhibit I. The suggestion was based on the theory that if every contract price could be re-[fol. 126] examined by the parties in the light of actual experience under the contract, it should be possible to eliminate the bulk of excessive profits. Section 403, as finally enacted, differs in many respects from our proposal, but it retains the central principle that a fixed percentage limitation on profits should not be established.

35. The War Department has consistently opposed the substitution of a 100% excess profits tax in place of the renegotiation statute, for the same reasons for which we disapproved a flat percentage limitation on profits from war contracts. Our views are stated at length in the report of the Hearings before a Subcommittee of the Senate Committee on Finance on Section 403 of Public Law No. 528, September 29-30, 1942, 77th Congress, 2d Session, and the Hearings before the Committee on Naval Affairs, House of Representatives, pursuant to H. Res. 30, June 1943, 78th Cong., 1st Sess. pp. 997-1000. The Introductions to the Renegotiation Regulations of the War Contracts Price Adjustment Board and to the Joint Renegotiation Manual approved by the Joint Price Adjustment Board also contain statements on this point with which the War Department is in accord. In brief, the major objection to a 100% excess profits tax is that it would remove all incentive to reduce costs or promote efficiency, and in this respect would tend to increase the cost of war procurement through the waste of manpower and resources so as to counterbalance any gain in tax collections.

36. The War Department has found that the Renegotiation Act is the most satisfactory and effective method of eliminating excess profits on war contracts. The Department has vigorously opposed the repeal of the statute.

[fol. 127] Contracts on Which Final Payment Had Not Been Made on April 28, 1942

37. At the end of April 1942, the following amounts were obligated for contracts, but unexpended, by the Navy Department and the three major procurement services of the War Department:

Army Air Forces contracts, over	$16,700,000,000
Ordnance Department contracts, over	10,000,000,000
Engineers contracts, over	4,000,000,000
Navy contracts, over	18,000,000,000
Total, over	48,700,000,000

These figures concern only the agencies listed; they do not include subcontracts; nor do they include sums actually paid prior to April 28, 1942, on contracts on which final

payment was not made until after that date. The figures do, however, include sums owing on some contracts exempt from renegotiation under the statute, but such sums are relatively small.

38. On the whole, it is certain that, on April 28, 1942, there were outstanding uncompleted war contracts in a total figure considerably in excess of 50 billion dollars which would have been exempt from renegotiation if the statute had not been made applicable to contracts existing on April 28th but with respect to which final payment had not been made by that date.

39. It is impossible to give more than the most general data concerning the life of the uncompleted contracts in existence on April 28, 1942. The average time required for the construction of the major types of projects (cantonments, airfields, ordnance plants) being constructed under the supervision of the Corps of Engineers in April 1942 was from 7 to 18 months. A substantial proportion of the Ordnance contracts placed during the first four months of 1942 extended for over six months; some of these contracts [fol. 128] contemplated production extending over a period as long as two years. The Navy Department estimates that at least one-third of its funds which were obligated but unexpended on April 30, 1942, represented contracts requiring 12 months or longer for performance.

Excessive Profits Eliminated by Renegotiation

40. As of September 19, 1944, 34,966 contractors had been assigned for renegotiation with respect to fiscal years ending during the calendar year 1942. As of the same date, 35,200 contractors had been assigned for such renegotiation with respect to fiscal years ending during the calendar year 1943. Of the cases assigned with respect to fiscal years ending in the calendar year 1942, relatively few remain uncompleted; and the renegotiation agencies are well along toward completion of the cases assigned with respect to fiscal years ending in the calendar year 1943.

41. As of September 22, 1944, in 7,949 cases excessive profits had been determined by agreement between the contractor and the Government, and at that date in 207 cases excessive profits had been determined by unilateral action by the Government without the agreement of the contractor.

Thus, 97.5% of the cases in which excessive profits had been determined involved bilateral agreements in which the contractor joined. These figures do not include the cases, of which there are a large number, in which no excessive profits were found or in which the renegotiation proceedings were cancelled as the result of information indicating no excessive profits. It should be noted, too, that the number of contractors affected by the bilateral agreements exceeds the number of 7,949, since many of these agreements affect groups of parent and subsidiary corporations.

[fol. 129] 42. It is impossible at the present time to give complete figures as to the dollar volume of the sales covered by the cases in which excessive profits have been determined. As of September 16, 1944, in the 7,733 cases concluded by bilateral agreement or unilateral determination (excluding Army construction contracts), the aggregate renegotiable sales of the contractors affected (prior to adjustment for excessive profits eliminated) were $30,975,405,000. Excessive profits eliminated in these cases amounted to $3,586,652,000. In addition, approximately $57,000,000 in excessive profits had been recovered from construction contractors assigned to the Chief of Engineers for renegotiation. These figures do not take account of reductions in Federal taxes occasioned by the elimination of excessive profits through renegotiation.

43. The figures in the preceding paragraph do not include excessive profits eliminated (a) by refunds made to contracting officers prior to and unrelated to statutory renegotiation, (b) by reduced prices with respect to future performance or deliveries under existing contracts, or (c) by reduced prices under new contracts. No statistical data are available as to the amounts of excessive profits so eliminated or prevented, but they have been substantial, and run into many hundred millions of dollars.

44. The data contained in paragraphs 40 to 43 cover renegotiations carried on by all agencies and not merely those in which the War Department is interested.

Renegotiation Procedure

45. From the very beginning of statutory renegotiation by the War Department, the attempt has always been made to secure the full cooperation of the contractor in the proc-

ess of renegotiation. It has been the uniform practice to [fol. 130] explain the purposes, policies, and methods of renegotiation to contractors and to elicit their participation both in the furnishing of information and in the drawing up of an agreement as to excessive profits. Although Title XIII of the Second War Powers Act, 1942, grants the Government certain powers to secure the pertinent records and data, on which renegotiation must be based, from recalcitrant contractors, we have always sought to obtain this information voluntarily, and without unduly hampering the contractor's activities. Similarly, although the statute empowers the renegotiation agencies to determine excessive profits unilaterally, it has always been our policy to renegotiate, in the literal sense, and to seek a bilateral agreement with the contractor, whenever possible.

46. In most cases, renegotiation in the War Department (for fiscal years ended on or prior to June 30, 1943) was conducted initially by Price Adjustment Sections of the Technical Services (e. g., Ordnance Department, Signal Corps, Chemical Warfare Service) and the Army Air Forces. If the initial renegotiation proceedings did not result in an agreement with the contractor, or if a bilateral agreement was proposed in cases where the contractor's gross sales were more than $10,000,000, the case was always referred to the War Department Price Adjustment Board. I am advised that the Board, in every case in which a contractor requested a meeting with representatives of that Board, accorded the contractor that opportunity. Until April 12, 1945, if an agreement could not be reached between the representatives of the Board and the contractor, the case was then referred, together with a full report, to me as Under Secretary of War. It was my practice to refer such case, for initial review, to one of my principal assistants, not otherwise connected with renegotiation. This assistant invariably allowed the contractor, upon the latter's request, to meet with him before he made any recommenda- [fol. 131] tion to me; and in this meeting the contractor could present any pertinent material not previously furnished and discuss the matter from the contractor's point of view. I personally made the final determination that excessive profits had been made in every case in which a unilateral determination was signed by me. The last hearing conducted by an assistant of mine under this procedure

was held on April 12, 1945. On April 11, 1945, I delegated to the Chairman of the War Department Price Adjustment Board the power to make unilateral determinations under the Renegotiation Act. I am informed that, pursuant to that delegation, the War Department Price Adjustment Board has established a Determination Committee consisting of the six War Department members of the Board. That Committee, as I am informed, has granted and will grant contractors an opportunity for a meeting with two members of the Committee, appointed by the Chairman for that purpose, before a final determination is made in any case where the Committee disapproves the determination recommended by the representatives of the Board who met with the contractor initially. In sum, opportunity is always afforded the contractor for discussions with representatives of the renegotiating agency and the presentation of pertinent data and argument. No unilateral determination has ever been made without the contractor's having been offered the opportunity, at some stage and in substantially all cases at several stages in the renegotiation process, to present his views and discuss the matter.

Robert P. Patterson (s)

Sworn to and subscribed before me this 11th day of June, 1945.

Anna C. Lanigan (s), Notary Public, D. C. (Seal)

My Commission Expires June 15, 1946.

[fol. 132] EXHIBIT A

W. P. B. Record of Monthly Awards of Prime War Supply Contracts

Date	Number of contracts				
	Total	Aircraft	Ships	Ordnance	All other
1941					
July	1,124	40	40	202	842
Aug.	1,352	62	77	264	949
Sept.	1,476	78	68	223	1,107
Oct.	1,824	97	49	305	1,373
Nov.	1,566	94	67	321	1,084
Dec.	1,885	116	63	384	1,322
1942					
Jan.	3,612	132	156	836	2,488
Feb.	3,656	136	165	710	2,645
Mar.	4,188	162	161	765	3,100
Apr.	4,866	187	197	795	3,687
May	3,597	114	126	459	2,898
June	3,657	143	171	439	2,904
	Value (millions of dollars)				
1941					
July	1,057	92	129	551	285
Aug.	1,842	688	237	636	281
Sept.	1,335	386	159	436	353
Oct.	2,404	1,264	107	569	464
Nov.	1,506	261	288	461	495
Dec.	3,131	985	406	1,150	589
1942					
Jan.	9,456	2,435	2,092	4,015	914
Feb.	7,301	3,628	893	1,891	889
Mar.	5,343	1,440	728	1,842	1,333
Apr.	5,715	1,234	1,014	1,808	1,659
May	4,843	1,337	759	1,530	1,216
June	5,299	937	1,249	1,709	1,404

[fol. 133] EXHIBIT B

War Department, Office of the Under Secretary
Washington, D. C.

January 14, 1942.

PC-E-400.13 (Procurement). P. & C. General Directive No. 8. Memorandum for: The Chief of the Air Corps. The Chief, Chemical Warfare Service. The Chief of Coast Artillery. The Chief of Engineers. The Chief, National Guard Bureau. The Chief of Ordnance. The Quartermaster General. The Chief Signal Officer. The Surgeon General.

Subject: Selection of contractors for war production.

1. The heavy procurement program and need for speed in production make vital the best utilization of every facil-

ity. As a limited number of facilities are able to undertake precision work, care must be exercised in allocating only such work to them, each plant to undertake the highest caliber of work its equipment can produce.

2. In awarding prime contracts, great weight must be placed upon the contractor's agreement to subcontract a high percentage whereyer this is feasible. Unless secondary facilities are thus put to work on the simpler components, difficulty will later be encountered in placing prime contracts calling for precision work. The best results will be obtained by insisting upon such subcontracting at the time of the award of the prime contract as efforts to have prime [fol. 134] contractors subcontract simpler components at a later date may be only partially successful after work has been started.

3. In many cases requirement of subcontracting will add to the total cost. Price is a secondary consideration as compared with speed and efficient production. Reasonable increase in price which will speed the program through subcontracting is justified. Because of the increase in price, subcontracting should be taken into account in making the award and should be provided for in the prime contract, where possible, rather than to assume that it can be arranged after the award has been made.

4. Speed in placing orders now authorized is important, but speed of production as a whole during the next 18 months is of even greater importance. Accordingly, under our present decentfalized procurement policy the chiefs of the supply arms and services and their district procurement offices must exercise their best judgment in the matters mentioned in paragraphs 1, 2 and 3 above. War calls for the same boldness and imagination in procurement as it does in meeting combat conditions in the field.

By direction of the Under Secretary of War:

(S) John W. N. Schulz, Brigadier General, U. S. Army, Director of Purchases and Contracts.

[fol. 135] EXHIBIT C

War Department, Office of the Under Secretary
Washington, D. C.

September 17, 1941.

PC-L 162 (Escalator Clause). P. & C. General Directive No. 48. Memorandum for The Chief of the Air Corps. The Chief, Chemical Warfare Service. The Chief of Coast Artillery. The Chief of Engineers. The Chief, National Guard Bureau. The Chief of Ordnance. The Quartermaster General. The Chief Signal Officer. The Surgeon General.

Subject: Price Adjustment Clause.

1. Price Adjustment articles (escalator clauses) will be included in supply contracts only in exceptional cases where the facts justify their use. In determining the justification for the inclusion of such a clause, the following factors, among others, should be given consideration:

a. The inclusion of an escalator clause should result in a lower contract price than if such a clause were not included. Before consenting to the inclusion of an escalator clause in a contract, the contracting officer should satisfy himself that the contractor has not included in the contract price any amount to cover probable increased direct labor or direct materials costs.

b. The time required for the performance of the contract should be such as to make it impossible to [fol. 136] forecast with reasonable accuracy the extent of changes in the direct labor or direct materials cost under the contract. Ordinarily the time of performance should not be less than six (6) months.

c. The contract should be of sufficient amount to warrant the administrative expenses which would be incurred in administering the escalator clause. As a general rule, contracts for less than $100,000 would not warrant such expenditure.

2. Attached hereto are copies of the Price Adjustment article (escalator clause) as approved by the Under Secretary of War on September 13, 1941, for use in supply con-

tracts hereafter entered into where it has been determined that an escalator clause should be included. Any deviations from this form will be made only after approval in each case by the Under Secretary of War. Requests for such approval will be accompanied by a detailed statement of the facts and reasons justifying such deviation.

3. All contracts containing this escalator clause will also contain an article providing for termination of the contract for the convenience of the Government.

4. It is desired that the foregoing instructions be communicated promptly to all contracting agencies in your branch.

By direction of the Under Secretary of War:
(S) John W. N. Schulz, Brigadier General, U. S. Army, Director of Purchases and Contracts.

Incls:
eys. Price Adjustment Clause.

[fol. 137] Form of Escalator Clause Approved by the Under Secretary of War, September 13, 1941

Article ..... Price Adjustments.

The total contract price stated in Article ..... is subject to adjustment for increases or decreases in direct labor and direct material costs in accordance with the following method:

(a) Labor.

(1) Upon the basis of labor costs prevailing in ...., 194.... (hereinafter called the base month) the direct labor cost is estimated to be $..... Direct labor, as used herein, refers only to the labor of employees of the Contractor performed directly on, and properly chargeable to, the supplies manufactured hereunder, excluding, but without limitation, all executive, managerial, supervisory, technical, professional, office, clerical and sales employees, but including working foremen, gangbosses and strawbosses. The Contractor represents that the above estimated cost is based upon a schedule, approved by the Contracting Officer, of the kinds or classes of jobs or occupations to be charged as direct labor under this contract, and that the estimate includes only such jobs or

occupations. In computing the actual direct labor cost for the purposes of paragraph (a) (2) and (a) (3) hereof, the cost of kinds or classes of jobs or occupations not listed in this schedule, a copy of which is attached hereto, shall not be included.

(2) After deliveries under this contract have been completed, the estimated direct labor cost set forth above shall be apportioned into direct labor cost quotas for the consecutive three-month periods (hereinafter called "quota periods") beginning on the first day of ....., 194...,[1] [fol. 138] and on the first day of each third month thereafter. This apportionment shall be made by dividing the actual direct labor cost properly charged to this contract during each quota period by the total actual direct labor cost under the contract, and by multiplying the percentage thus obtained for each quota period by the total estimated direct labor cost. The result shall be the direct labor cost quota for that period.

(3) Upon the basis of the average hourly earnings in the durable goods manufacturing industries compiled by the United States Department of Labor, Bureau of Labor Statistics, the Government will determine the average hourly earning for each quota period by adding the average hourly earnings for each month of such quota period and dividing their sum by three, and calculations will be made of the percentage of change of such average hourly earnings for each quota period in comparison with the average hourly earnings for the base month. The labor cost quota for each quota period will then be multiplied by the percentage of change for such quota period, and the result will be applied as an increase or decrease in the contract price; *Provided*, That the total of such increases in the contract price shall not exceed the amount by which the total actual direct labor cost exceeds the total estimated direct labor cost, and that the total of such decreases in the contract price shall not exceed the amount by which the total actual direct labor cost is less than the total estimated direct labor cost.

(b) Materials.

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[1] The month during which the contract is executed or performance is commenced, whichever is earlier.

[fol. 139] (1) Upon the basis of materials costs prevailing in the base month, the cost of direct materials which the Contractor will purchase for the performance of this contract, excluding materials to be used which the Contractor has on hand or for which firm price commitments have been obtained by him (hereinafter call "direct materials to be purchased hereunder"), is estimated to be $..... (hereinafter called "estimated adjustable materials cost"). Direct materials as used herein refers only to those materials which go into and become a component part of the Contractor's finished product and which, under the cost accounting system regularly employed in the Contractor's plant, are accounted for by direct charges to the particular contract. The Contractor represents that the above estimate is based upon a schedule, approved by the Contracting Officer, of the kinds and classes of "direct materials to be purchased hereunder." In computing the actual cost of "direct materials to be purchased hereunder" for the purposes of paragraphs (b) (2) and (b) (3) hereof, the cost of kinds or classes of materials not listed in this schedule, a copy of which is attached hereto, shall not be included.

(2) After deliveries under this contract have been completed, the "estimated adjustable materials cost" shall be apportioned into materials cost quotas for the quota periods as defined in paragraph (a) (2) above. This apportionment shall be made by dividing the total actual cost of "direct materials to be purchased hereunder" into the portion of such cost properly charged to the contract during each quota period, and by multiplying the percentage thus obtained for each quota period, by the total "estimated adjustable materials cost." The result shall be the materials cost quota for that period. Direct materials shall be charged [fol. 140] to the contract for the quota period during which the price therefor is determined as between the Contractor and the materials supplier; *Provided*, That where commitments are obtained by the Contractor for future deliveries at a firm price in excess of the market price prevailing at the time such commitments were obtained, such materials shall be charged to the contract for the quota period during which delivery is to be received by the Contractor; *And, Provided further*, That with respect to materials which are not identifiable with the purchase commitments under which they are acquired, determinations as to (1) whether the

materials employed in the performance of this contract were on hand at the time the contract was executed, and (2) the quota period to which the materials are to be charged and the amount of such charge shall, with the approval of the Contracting Officer, be made on the basis of the accounting system regularly employed in the Contractor's plant.

(3) The Government will average for each quota period the index numbers of wholesale prices for .....[2] compiled by the United States Department of Labor, Bureau of Labor Statistics for the three months included within such quota period, and calculations will be made of the percentage of change of such average index numbers for each quota period in comparison with the index numbers for the base month. The materials cost quota for each quota period shall then be multiplied by the percentage of change for such quota period, and the result will be applied as an increase or decrease in the contract price; *Provided*, That the total of such increases in the contract price shall [fol. 141] not exceed the amount by which the actual cost of "direct materials to be purchased hereunder" exceeds the total "estimated adjustable materials cost," and that the total of such decreases in the contract price shall not exceed the amount by which said total actual cost of "direct materials to be purchased hereunder" is less than the total "estimated adjustable materials cost."

(c) General.

(1) For the purpose of determining increases or decreases in contract prices, rates of change in average hourly earnings and rates of change in the materials index number will be calculated to the nearest one-tenth of one percent, and there shall be used the latest figures which shall have been issued by the Bureau of Labor Statistics up to the close of the fourth month following the last quota period under this contract.

(2) Payments for increases, or deductions for decreases in the contract price, resulting from the operation of this

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[2] The index for the commodities group which includes the items making up the major portion of the "direct materials to be purchased hereunder."

article, will be made after the completion of the calculations of price adjustments in accordance herewith; *Provided,* That the Government may, from time to time during the life of the contract, make partial payments on account of such increases, subject to such requirements as a condition precedent to such payments as the Contracting Officer may provide; *Provided, further,* That in this event such partial payments shall exceed the amount due to the Contractor by the operation of this article, the Government shall deduct the amount of such excess from any further payments due under this contract.

(3) Should the Contractor, during the performance of this contract, on account of subcontracting, or otherwise, depart from the production methods upon which the estimates and schedules of direct labor and direct materials [fol. 142] costs were based to such an extent that the use of such estimates or schedules will operate to produce an unfair adjustment of the contract price, a corresponding correction in such estimates or schedules may be made by mutual agreement between the Contractor and the Contracting Officer. In the event of disagreement with respect to the need for or extent of such correction, the procedure of Article 12 (Disputes) shall apply.

(4) If this contract is terminated pursuant to any provision thereof the contract price shall be adjusted as provided above, except that for the purposes of paragraphs (a) (2), (a)(3), (b)(2), and (b)(3), the terms "estimated direct labor cost" and "estimated adjustable materials cost" shall be understood to refer to that part of such costs which corresponds to that proportion of the supplies contracted for which is completed and delivered by the Contractor, and the terms "actual direct labor cost" and "actual cost of direct materials to be purchased hereunder," shall refer only to that part of such costs which is properly chargeable to the supplies completed and delivered.

(5) The Contractor shall file with the Contracting Officer, not later than sixty days after the completion of the performance of the work under this contract or after its termination, a statement of the actual direct labor costs and the actual costs of "direct materials to be purchased hereunder," certified as correct by an independent public accountant approved by the Contracting Officer, showing the

amounts of such costs properly chargeable during each quota period and, in case of termination, the amounts properly chargeable to the supplies completed and delivered. In determining the total actual direct labor cost and the total [fol. 143] actual "direct materials to be purchased hereunder," and in determining the amounts thereof to be charged in each quota period, the Contractor may, subject to the approval of the Contracting Officer and to the limitations of paragraph (b) (2), employ the accounting system regularly employed in the Contractor's plant. Such statement shall be deemed prima facie correct. The Government reserves the right to audit the books and records of the Contractor, to determine the accuracy of such determinations and certification, and to obtain any information in connection with the operation of this Article. All information obtained from the Contractor's records shall be treated as confidential. The Contractor shall preserve all the books, papers, and other accounting records pertaining thereto; *Provided,* that if the Contractor at any time after the lapse of three years following the completion or cessation of work under the contract, desires to dispose of said books, papers, and accounting records, he shall so notify the Secretary of War, or his duly authorized representative, who shall either authorize their destruction or notify the Contractor to turn them over to the Government for disposition.

[fol. 144] EXHIBIT D

War Department, Office of the Under Secretary
Washington, D. C.

December 17, 1941.

PC-L 162. P. & C. General Directive No. 86. Memorandum for: The Chief of the Air Corps. The Chief, Chemical Warfare Service. The Chief of Coast Artillery. The Chief of Engineers. The Chief, National Guard Bureau. The Chief of Ordnance. The Quartermaster General.

The Chief Signal Officer. The Surgeon General.
Copy to: The Judge Advocate General—for information.
Subject: Amendment to Price Adjustment Clause.

1. Reference is made to the form of escalator clause approved by the Under Secretary of War on September 13, 1941, accompanying P. & C. General Directive No. 48.

2. It has been determined that the escalator clause should be amended so as to provide for adjustments on account of changes in pay-roll taxes, and therefore, the approved form of escalator clause will be amended by adding the following provision thereto as paragraph (c) (6):

> If after the date on which the prices herein were quoted, the Congress or any state legislature, shall impose, remove, increase or decrease any pay-roll tax required to be borne by the contractor and directly [fol. 145] applicable to or measured by the pay-rolls of the contractor hereunder, then the rate of such newly imposed tax, or the net increase or net decrease in the rate of a previously imposed tax, shall be multiplied by that portion of the actual direct labor cost which is subject to such increases or decreases in the tax or taxes, and the result shall be paid the contractor under this paragraph.

3. It has also been determined that the escalator clause should be amended so as to provide for adjustment on account of changes in indirect labor and indirect material costs. Accordingly, the following amendments to the approved form of escalator clause will be made:

a. As a second sentence to Paragraph (a) (1), add the following:

"It is also estimated that the indirect labor cost attributable to this contract is .....% of such estimated direct labor cost."

b. Add the following as Paragraph (a) (4):

"The total increase or decrease to be paid or deducted under Paragraph (a) (3) shall be multiplied by .....% [1] and the result shall be applied as a further increase or decrease in the contract price, as an adjustment for the indirect labor cost under this contract."

c. Add the following as the second sentence in Paragraph (b) (1):

"It is also estimated that the indirect materials cost attributable to this cotnract is .....% of such estimated direct materials cost."

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[1] The percentage of indirect labor cost stated in Paragraph (a) (1).

d. Add the following as Paragraph (b) (4):

"The total increase or decrease to be paid or deducted under Paragraph (b) (3) shall be multiplied by [fol. 146] .....% [2] and the result shall be applied as a further increase or decrease in the contract price, as an adjustment for the indirect materials cost under this contract."

4. In negotiating the estimated direct labor cost, the percentage thereof represented by indirect labor cost, the estimated direct material cost, and the percentage thereof represented by indirect material cost, the Contracting Officer should consider, among other things, the following factors:

a. The amount of the estimated direct labor cost and the amount of the estimated direct materials cost should be limited in accordance with the definitions of direct labor and direct material costs contained in paragraphs (a) (1) and (b) (1) of the escalator clause, and should not include any amounts for indirect labor or indirect material costs;

b. The total of the estimated direct labor cost and the estimated direct material cost, together with the amounts obtained by the application of the percentages set forth for indirect labor and indirect materials, should bear a reasonable relation to the total contract price. In any case where the difference between the total of these amounts and the contract price does not leave a reasonable margin to cover profit, rent, depreciation, taxes, and similar costs not included in the labor or material costs factors, it will be apparent that the estimates are too high, and should be accordingly reduced.

By direction of the Under Secretary of War:

(S) John W. N. Schulz, Brigadier General, U. S. Army, Director of Purchases and Contracts.

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[2] The percentage of indirect materials cost stated in Paragraph (b) (1).

[fol. 147] EXHIBIT E

War Department Price Adjustment Board
Policy and Procedure

Purpose of the Board.

The Price Adjustment Board will serve as a focal point for the review of contracts existing between the War Department and its contractors. Its duties will be to make sure that the War Department is doing an economical job of purchasing and that contractors are not making excess or unreasonable profits on war orders. In its review of contractor profits the Board will endeavor to eliminate from contractor cost calculations exhorbitant items of whatever nature.

The Board will assist the Services in securing an adjustment in contract prices that will accomplish the foregoing objectives.

The Board will also serve contractors who feel that their contract prices are such that a likelihood exists that they will make excessive or unreasonable profits. It will invite war contractors finding themselves in this position to consult with it for the purpose of arriving at a fair and equitable voluntary adjustment.

Operating Policies.

The following principles will be observed by the Price Adjustment Board in dealings with contractors:

1. The Board will endeavor to arrange for a readjustment in contract price or to obtain a return of payments made pursuant to a contract to the extent which will result in limiting the contractor to a fair and reasonable profit.

2. In judging the reasonableness of profit, the Board will consider:

[fol. 148] (a) the total profit made by the contractor before allowance for federal income and excess profit tax.

(b) the amount of profit per unit based on estimated or actual cost.

3. In determining the estimated or actual cost per unit of performance of the contract, the Board will give consideration to all items of cost, including the following:

A. Factory Cost:

1. Direct materials
2. Direct productive labor
3. Direct engineering labor
4. Miscellaneous direct factory charges
5. Indirect factory expenses

Total Factory Cost

B. Other manufacturing cost
C. Miscellaneous direct expenses
D. Indirect engineering expenses
E. Expenses of distribution, servicing and administration
F. Guarantee expenses

4. The Board will in general be guided by the cost accounting system regularly utilized by the contractor, except that the Board will, in appropriate cases, disallow salaries, bonuses or other expenditures which are clearly excessive.

5. In determining the amount of profit to be viewed as reasonable, the Board will give proper consideration — the following:

A. The first factor in determining the attitude of the Board toward the contractor will be based on the contribution that the contractor has made and is mak-
[fol. 149] ing to the completion of the war production program.

B. Whether the contract is performed in whole or in part with facilities furnished by or financed by the Government.

C. The amount of invested capital employed by the contractor in the performance of the contract.

D. The ratio between this investment and sales volume.

E. The period of time required to perform the contract.

F. The complexity or simplicity of the manufacturing operations involved.

G. The presence or absence of exceptional risks to be borne by the company.

H. The degree of skill and management and organization required of the contractor. In this connection special attention will be paid to the extent to which the Government has been called upon to arrange for furnishing "know-how" to the contractor.

I. The contribution that the contractor has made to the technical improvement and development of war matériel and production methods.

J. Special consideration will be given those contractors who have assisted other producers in performing a better job.

6. In cases where performance has been substantially or wholly completed, consideration will be given to the extent to which the contractor has met or anticipated delivery schedules.

7. The Board shall not be limited to the foregoing factors but may give consideration to any other factors which in its judgment are reasonably applicable.

[fol. 150] Method of Operation.

Information as to concerns making unreasonable profits or those paying excessive salaries or bonuses, or setting up excessive reserves, etc., will be obtained by the Board from the services, Division of Budget & Financial Administration, Contract Clearance Branch of the War Production Board, or any other sources.

All costs analyses are to be prepared by the Division of Budget and Financial Administration.

When the contractor is working for the Navy or the Maritime Commission as well as the Army, that department which has been assigned to the contractor will take charge of the case.

The Price Adjustment Board function will be completed when an agreement is arrived at with the contractor setting a limiting figure that shall be considered a reasonable profit before federal income and excess profit taxes. From this point forward, it is contemplated that the contractor will renegotiate contracts with the Service or Services involved so as to bring its total profit down to the agreed upon figure.

Exhibit F

Memorandum

Pursuant to Executive Order No. 9127, dated April 8, 1942, and for the purpose of controlling profits and costs under war contracts through adjustments with contractors, there have been established with the War Production Board, the War Department, the Navy Department and the Maritime Commission cost analysis sections. Further to implement control of costs and profits on war contracts, the following procedures will be established:

1. The War Department and the Navy Department and the Maritime Commission will each create a board [fol. 151] to be known as the Price Adjustment Board of the War Department, the Navy Department, or the Maritime Commission, as the case may be, to advise and assist the official in such Department or Commission in charge of purchasing, in securing adjustments or refunds in instances where it is determined that costs or profits of contractors are, or may be, excessive for any reason. Each board shall exercise such other powers not inconsistent with this order as may be delegated to it by the Department or Commission which created it.

2. The Chairman of the War Production Board shall recommend a representative for appointment to each board. The Price Adjustment Boards may have one or more members in common.

3. The Cost Analysis Section of the War Production Board will conduct general surveys of the profits and costs of holders of war contracts and industry-wide studies of a like nature, either upon the request of one of the Price Adjustment Boards, or of the Cost Analysis Section of any Department, or upon its own initiative.

4. The Cost Analysis Sections of the War Department, Navy Department and the Maritime Commission will act as fact finding agencies for the Price Adjustment Boards and will upon the request of any Price Adjustment Board conduct investigations into the cost

and profits of any contracts in which Departments or the Commission are interested. Any such investigation made upon the request of a Price Adjustment Board will be in such form and in such detail and will include such subject matter as such Price Adjustment Board may require. The Departments and the Commission will cooperate with each other in order to avoid dupli- [fol. 152] cating investigations of common contractors.

5. All cost analysis reports and all information obtained from contractors or otherwise by the various Cost Analysis Sections including that of the War Production Board and all information and records of the various Price Adjustment Boards will be available at all times to each of the Price Adjustment Boards and to each of the Cost Analysis Sections.

6. The Cost Analysis Sections of the War Production Board and of the Departments and the Commission are authorized to make use of the facilities of the Treasury Department, Securities and Exchange Commission; Federal Trade Commission and other proper departments or agencies of the Government in securing and assembling information.

7. Each Price Adjustment Board may establish such policies and procedures for the administration of its proceedings as it may deem proper. Every effort shall be made to keep the procedure of each board simple and flexible. Each board shall keep a written record of each action taken by it. Each board may delegate to any one or more of its members the power to initiate investigations, request information and assistance on behalf of the board and to represent the board in negotiations with contractors.

8. Where contractors have contracts with both Departments or with one or both of the Departments and the Commission, the Price Adjustment Boards of the Department or Commission involved shall agree as to how and by whom the negotiations shall be conducted. [fol. 153] 9. No audit shall be made by any Department or the Commission pursuant to Executive Order

No. 9127 without first advising the Cost Analysis Section of the War Production Board.

(Signed) Robert P. Patterson, Under Secretary of War; Forrestal, Under Secretary of Navy; E. S. Land, Chairman, Maritime Commission.

Approved:

(Signed) D. M. Nelson, Chairman, War Production Board.

EXHIBIT G

War Department, Washington

April 25, 1942.

Memorandum for Directors of all Staff Divisions, Services of Supply. Chiefs of All Supply Services. Chief of Each Administrative Service. Commanding Generals of All Corps Areas.

Subject: Price Adjustment Board, Services of Supply.

1. There is created within the Services of Supply a Price Adjustment Board.

2. The mission of the Price Adjustment Board shall be to advise and assist the Chief of the Purchase Branch, Procurement and Distribution Division, in securing adjustments and refunds in cases where it is thought that costs or profits of War Department contractors are or may be [fol. 154] excessive by reason of the payment of excessive salaries or bonuses or for any reason.

3. The members of the Board will be selected by the Commanding General, Services of Supply, with the approval of the Under Secretary of War. One member will be selected with the approval of the Chairman of War Production Board, as his representative.

4. The Board is instructed wherever appropriate to function jointly with representatives or agencies of the Navy Department, Maritime Commission, and other Departments or agencies of the Government.

5. The Board will receive from the Cost Analysis Section of the War Production Board, the Cost Analysis Section of

the Fiscal Division of the Services of Supply, the Supply Services, the Army Air Force, and from any other source, information with respect to contractors who are thought to have excessive costs, to be making excessive profits, or to be paying excessive salaries or bonuses.

6. (a) The Cost Analysis Section of the Fiscal Division of the Services of Supply shall upon request of the Board make such audits and analyses as may be designated by the Board and shall secure for the Board from the Treasury Department, the Securities and Exchange Commission, the Federal Trade Commission, and from any other Department or agency of the Government, or from the contractor involved, such additional information as the Board may request in order to expedite and assist it in the performance of its functions.

(b) All Divisions and personnel of the Services of Supply and the Army Air Force shall furnish such information and assistance to the Board as it may request or as may appear desirable to aid it in the performance of its functions.

[fol. 155] (c) To effect full coordination between the Services of Supply, the Army Air Force, and other Departments and to insure a uniform policy, price reductions which are offered to or contemplated by, the Services of Supply and the Army Air Force will be referred to the Chief of the Purchases Branch.

7. The Board is authorized to delegate to any one or more of its members the power to initiate investigations and request information and assistance on behalf of the Board and to represent the Board in negotiations with contractors. The Board shall develop such other policies and procedures as it may deem advisable in performing its functions and accomplishing its purposes.

8. The Board shall report to the Chief of the Purchases Branch, Procurement and Distribution Division, Services of Supply, its recommendations for adjustments with contractors. These recommendations, if approved by the Chief of the Purchases Branch and the Director or Deputy Director of the Procurement and Distribution Division, Services of Supply, shall be transmitted to the Services concerned for the purpose of effecting any renegotiation or revision

of contracts required in order to carry out such recommendations.

(Sgd.) Brehon Somervell, Lieutenant General, Commanding.

Approved: April 25, 1942.

(Sgd.) Robert P. Patterson, Under Secretary of War.

[fol. 156] EXHIBIT H

War Department, Headquarters, Services of Supply
Washington

March 13, 1942.

SP-PB-ppp 300.4. P. B. General Directive No. 31. To: The Chief, Chemical Warfare Service. Chief of Engineers. Chief of Ordnance. The Quartermaster General. Chief Signal Officer. The Surgeon General. Commanding General, Transportation Division. Commanding Generals, all Corps Areas. Commanding Officers, General Depots.

Subject: Use of Price Renegotiation Clause in Fixed Price Contracts.

1. It is essential to eliminate all delays in the production of items immediately required which result from the time required for the negotiation of fixed price contracts. In any case where in the opinion of the Contracting Officer it is desirable that the Contractor immediately commence production or preparation therefor, the Letter Purchase Order prescribed by P. & C. General Directive No. 5, dated January 13, 1942, may be issued pending such negotiation. Where actual production and delivery may occur prior to the execution of the contract, the words "partial payments and" or words of substantially similar import may be inserted in paragraph 4 of such Letter Purchase Order before the words "advance payments."

[fol. 157] 2. Where a Letter Purchase Order is employed in accordance with paragraph 1 hereof, the contract should be negotiated at the earliest possible date even though final determination of price is impracticable at that time, and

provision should be made in the contract for redetermination or renegotiation of the price, as authorized herein.

3. The Contracting Officer, in order to facilitate the execution of the contract and the commencement of work thereunder, may, pursuant to the authority of the First War Powers Act, 1941 (Public 354, 77th Cong.) and Executive Order #9001, insert in the contract and apply either of the following articles: (a) Redetermination of Price (Attachment 1), or (b) Renegotiation (Attachment 2).

4. It will be observed that Attachment 2 imposes upon the Contractor no legal obligation beyond that of furnishing a statement of actual costs and to renegotiate in good faith. Such statement will afford a basis for renegotiation of the contract price. On the other hand, Attachment 1 calls for the application of definite objective standards, thereby making the redetermination of price largely automatic rather than dependent upon renegotiation.

(Sgd) Brehon Somervell, Lieut. General, Commanding.

2 Incls:
Attach. 1,
Attach. 2.
Approved by:

Robert P. Patterson, Under Secretary of War.

Attachment No. 1.

Article ..... Redetermination of Price.

The parties hereto recognize that, because of circumstances beyond their control, accurate estimates of the cost [fol. 158] of performing this contract cannot be made within a reasonable time. Accordingly, they agree that the price stated in Article 1 shall be redetermined as provided below, upon the basis of the actual experience of the Contractor in performing part of his contract. Such redetermination of the price shall be made as follows:

(a) The estimated cost of performing this contract, upon which the price stated in Article 1 is based, is $....., itemized as follows: [1]

[1] This breakdown may be altered to suit particular circumstances.

A. Factory Cost:

1. Direct materials
2. Direct productive labor
3. Direct engineering labor
4. Miscellaneous direct factory charges
5. Indirect factory expenses [2]
   (State basis of allocation)
   Total Factory Cost

B. Other manufacturing cost
C. Miscellaneous direct expenses
D. Indirect engineering expenses
E. Expenses of distribution, servicing and administration
F. Guarantee expenses

(b) It is agreed that the cost of production of the first .....% of items called for hereunder, hereafter referred to as the "preliminary run" will not necessarily be typical for the remainder of the contract. The cost of production of the next .....%, hereafter referred to as the "test run" [fol. 159] shall be used as the general basis for redetermination. Within ..... days after the completion of the production of the "test run", the Contractor shall submit to the Contracting Officer separate statements of the actual cost of the production of the "preliminary run" and the "test run", itemized in the same way as the estimated cost stated above. Such statement shall be based upon the cost accounting system regularly utilized by the Contractor and certified as correct by an independent public accountant or by two officers of the Contractor. The Contractor shall submit his books and accounts to such examination and audit as shall be requested by the Contracting Officer.

(c) If the actual cost of production of the preliminary run plus the cost of the production of the remainder of the items called for by the contract, as indicated by the actual cost of production of the "test run", is less than the total estimated cost stated in paragraph (a), the total

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[2] State separately the estimated amount of each of the following items included:
(a) Normal depreciation.
(b) Special amortization.

price to be paid pursuant to Article I shall be reduced in the same ratio.

(d) Pending the redetermination of the price hereunder, all items delivered shall be paid for at the price set forth in Article 1. Upon the redetermination of such price hereunder, an amount equal to the difference between the price paid on all items theretofore delivered and such redetermined price for such items shall be applied by the Contractor as a credit against payment for subsequent deliveries, or shall be applied or returned to the Government as directed by the Contracting Officer.

(e) If this contract contains an escalator clause (Price Adjustment), notwithstanding any provisions of such escalator clause which may be inconsistent herewith, that clause shall be understood to relate only to that portion of the production under the contract which is not covered by the [fol. 160] statements of actual cost required by paragraph (b) of this article. The blanks in the escalator clause will be filled in at the time of redetermination hereunder, and the month in which the redetermination is made shall be taken as the base month for such escalator clause and the estimated labor costs and the estimated material costs shall include only such costs as are not reflected in the actual cost statements. For this reason the blanks in the escalator clause were not filled in at the time of the execution of this contract.

Attachment No. 2:

Article ..... Renegotiation.

(a) The Contractor represents that the contract price provided in Article ..... is based upon a total estimated cost of $..... itemized as follows: [1]

A. Factory Cost:

1. Direct materials
2. Direct productive labor
3. Direct engineering labor

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[1] This breakdown may be altered to suit particular circumstances.

4. Miscellaneous direct factory charges
5. Indirect factory expenses.[2]
(State basis of allocation)
Total Factory Cost

B. Other manufacturing cost
C. Miscellaneous direct expenses
D. Indirect engineering expenses
E. Expenses of distribution, servicing and administration
F. Guarantee expenses

[fol. 161] (b) Within ..... days after the completion of the production of .....% of the items called for under this contract, the Contractor shall submit to the Contracting Officer a statement of the actual cost of the production of said percentage, itemized in the same way as the estimated cost stated above. Such statement shall be based upon the cost accounting system regularly utilized by the Contractor and certified as correct by an independent public accountant or by two officers of the Contractor. The Contractor shall submit his books and accounts to such examination and audit as shall be requested by the Contracting Officer.

(c) Upon the written request of either party, which request shall be made within ..... days after the filing of the statement required by paragraph (b) hereof, the Contracting Officer and the Contractor will enter into negotiations and will attempt to agree upon a modification of the contract.

(d) Pending the renegotiation of the price hereunder, all items delivered shall be paid for at the price set forth in Article 1. Upon the renegotiation of the price hereunder, an amount equal to the difference between the price paid on all items theretofore delivered and such renegotiated price for such items, if in the Government's favor, shall be applied by the Contractor as a credit against payment for subsequent deliveries, or shall be applied or re-

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[2] State separately the estimated amount of each of the following items included:
(a) Normal depreciation.
(b) Special amortization.

turned to the Government as directed by the Contracting Officer; if in the Contractor's favor, it shall be paid by the Government on a separate invoice or voucher.

(e) If this contract contains an escalator clause (Price Adjustment) the figures set forth therein and the terms thereof shall be controlling in the absence of a modification of the contract under this article. In the event of such a modification, the escalator clause shall be so modified as to relate only to that portion of the production under the con- [fol. 162] tract which is not covered by the statement of actual cost required by paragraph (b) of this article. In modifying the provisions of the escalator clause, the month in which the renegotiation occurs shall be taken as the base month, and the estimated labor costs and the estimated material costs shall include only such costs as are not reflected in the actual cost statement submitted under paragraph (b) hereof.

EXHIBIT I

Joint Resolution to Provide for the Renegotiation of Contracts for the Production of War Materials for the Purpose of Limiting Profits Thereunder

Whereas it is imperative that effective measures be taken to limit the profits paid to contractors obtaining contracts for the production of war materials; therefore, be it

Resolved by the Senate and the House of Representatives of the United States, in Congress assembled, That—

1. The Secretary of War is directed to insert in any contract hereafter made by the War Department, which, in his judgment, may result in an excessive profit to the contractor, a provision for the renegotiation of the contract price at a period when the profits can be determined with reasonable certainty.

2. The Secretary of War is directed, whenever in his opinion excessive profits have been realized, or are likely to be realized, from any contract with the War Department, to require such contractor to renegotiate the contract price. This provision shall be applicable to all contracts hereafter made and to all contracts heretofore made,

whether or not such contracts contain a renegotiation clause, provided that final payment has not already been made [fol. 163] pursuant to such contract.

3. In renegotiating a contract price the Secretary of War shall not make allowance for any salaries, bonuses, or other compensation paid by the contractor to its officers or employees, in excess of a reasonable amount, nor shall he make allowance for any excessive reserves set up by the contractor, and the Secretary of War shall freely use the powers of audit conferred upon him by existing law for the purpose of ascertaining whether such unreasonable compensation has been or is being paid, or whether such excessive reserves have been set up.

4. In addition to the powers conferred by existing law, the Secretary of War shall have the right to demand of any contractor who holds uncompleted contracts with the United States for the production of war materials in the aggregate amount of $500,000 or more statements of actual costs of production and such other financial statements, at such times and in such form and detail as the Secretary of War may require.

5. The authority and discretion herein conferred upon the Secretary of War may be by him delegated to such individuals or agencies in the War Department as he may designate and he may authorize such individuals to make further delegations of such authority and discretion.

6. The foregoing provisions shall be applicable to the Secretary of the Navy in the case of contracts with the Navy Department, and to the Chairman of the Maritime Commission in case of contracts with that Commission. The powers conferred by paragraph 4 above shall be exercised by the War Department, the Navy Department, or the Maritime Commission, whichever holds the largest aggregate amount of uncompleted contracts for the production of war materials.

[fol. 164] IN UNITED STATES DISTRICT COURT

[Title omitted]

[File endorsement omitted.]

AFFIDAVIT OF H. STRUVE HENSEL—Filed June 11, 1945

[fol. 165] H. Struve Hensel, being first duly sworn, deposes and says:

1. I have been Assistant Secretary of the Navy since January 30, 1945. The Secretary of the Navy has delegated to me, as Assistant Secretary, the general supervision over all of the procurement activities of the Department of the Navy. I was appointed a Special Assistant to the Under Secretary of the Navy in January 1941 and was appointed Chief of the Procurement Legal Division upon the formation of that Division in July 1941. When the name of the Procurement Legal Division was changed to the Office of the General Counsel for the Department of the Navy in August 1944, I was appointed General Counsel, which position I held until my appointment as Assistant Secretary. As Chief of the Procurement Legal Division and General Counsel, I had general supervision over all of the procurement legal matters in the Department of the Navy and supervised the drafting of Navy contracts.

2. The statements made in this affidavit are based upon information received by me in my official capacity and which I believe to be true and accurate.

I. Scope and Complexity of Navy Procurement

3. The armed services in December 1941 were faced with procurement problems on a scale beyond anything which they had theretofore experienced. The problems of allocating materials and manpower were enormous. The Army and Navy urgently needed ships, planes, tanks and other munitions of every kind, regardless of cost. The logistics requirements had changed so much and so swiftly with the outbreak of war that the available data on the Govern-

[fol. 166] ment's previous procument were of very little assistance in fixing prices which would closely reflect the ultimate costs.

4. Prior to the emergency period, all Navy contracts were let as the result of competitive bidding. The first step away

from this requirement was taken in the Act of April 25, 1939, when the Congress authorized construction of naval facilities on island bases on a cost-plus-a-fixed-fee basis. In the next fifteen months several further authorizations were enacted allowing the negotiation of cost-plus-a-fixed-fee contracts for construction.

5. The first major expansion in the Navy's war-procurement planning was in June 1940. Upon the fall of France and the Low Countries, the Congress voted to make substantial additions to the United States Fleet. By December 1941, Navy procurement programs had been accelerated as demands from the Fleet became more imperative. After December 7, 1941, the procurement tempo skyrocketed. So many different items were needed in such large quantities, by both the War and Navy Departments, that the Navy Department felt compelled to give a commitment to almost any manufacturer who demonstrated ability to perform the work.

6. In June and July, 1940, the authorized strength of the Navy was approximately doubled. The "11 per cent Expansion Act" of June 14, 1940 and the "70 percent Expansion Act" of July 19, 1940 (the Two-Ocean Navy Act) were passed in recognition of the threats to this nation's security implicit in the German victories. These authorizations of increased Navy strength were accompanied by grants of contract authority and the necessary appropriations. The Act of June 28, 1940 (Public No. 671, 76th Congress) granted limited authority to negotiate contracts for vessels, propulsion machinery and equipment, and also granted the [fol. 167] necessary authority to construct facilities to build the vessels and munitions. Requests to the Congress for authority to negotiate contracts had emphasized that the Navy had need for utilizing the services of all shipbuilders, all manufacturers of naval ordnance and other munitions, rather than the services of only those making the lowest bids. In point of fact, the contracts let by the Bureau of Ships in late 1940 and the first half of 1941 to carry out the additions to the Fleet authorized by the Congress, in large part tied up the existing naval shipbuilding capacity of the nation. Although new shipbuilding facilities were being constructed and completed throughout the last half of 1940 and 1941, it was not until early 1942 that the

completion of vessels on the ways and the availability of the new shipbuilding facilities made possible the execution of another large group of shipbuilding contracts.

7. The vastness of the procurement programs in 1941 and the early part of 1942, as compared with earlier programs, tended to subordinate all other considerations to the single factor of getting the munitions. The Navy did not during this period have any mechanisms for determining close contract prices or for controlling profits under its contracts. More important, neither the Navy personnel responsible for procurement nor the contractors had any experience to enable them to gauge profits accurately. Many contractors were making new items which had never before been manufacturd in this country. Manpower problems began to be acute with the acceleration of inductions under the Selective Service Act. No one had any idea as to what effect manufacture of ordnance and other items by the thousands instead of by single items or in small lots would have on profits. It proved generally impossible to make allowance [fol. 168] in advance for increased efficiency gained from experience, and the greater profits, resulting from increased volume. In instance after instance the Navy found that costs and profits seemingly reasonable at the start of the contract became unreasonable after volume and experience had increased. The important contracts were so large that a small margin of error in computing prices could wipe out the contractor's capital. Conversely, allowances for contingencies, intended only for protection, often turned into unexpected profits. Finally, Navy personnel during this period were more interested in getting the munitions than in limiting profits under the contracts for such munitions.

a. Contract Statistics

8. The scope of the problem of acquiring naval supplies and equipment at reasonable prices can be discovered by examination of some Navy statistics for this period.

i. Commitments and expenditures

9. For the calendar years 1940-1944, the Navy's commitments and expenditures of appropriated funds were as follows (in billions of dollars):

	Fiscal, 1940	Fiscal, 1941		Fiscal, 1942		Fiscal, 1943		Fiscal, 1944	
	7-1-39 to 6-30-40	7-1 to 12-31-40	1-1 to 6-30-41	7-1 to 12-31-41	1-1 to 6-30-42	7-1 to 12-31-41	1-1 to 6-30-43	7-1 to 12-31-43	1-1 to 6-30-44
Commitments	$1.1	8.5	4.2	6.0	17.2	13.8	13.0	12.2	12.0
Expenditures	....	0.9	1.7	2.8	6.2	7.6	13.8	12.2	14.9

The commitments represent roughly the amount of contract obligations (including letters of intent) executed; plus amounts for pay, subsistence and transportation of naval personnel (for the fiscal years 1941 to 1944, inclusive, expenditures for these purposes, in billions of dollars, were 0.32, 0.65, 2.01 and 4.8 respectively). It will be noted that *commitments* in the first half of 1942 almost tripled those [fol. 169] of the latter half of 1941, and that *expenditures* in the first part of 1942 were more than double those of the earlier period. Futhermore, both commitments and expenditures for the second half of 1941 had gone up very considerably over those of the first half of 1941.

ii. Number and size of contracts

10. The following figures indicate the vast increase in procurement contracts during the months of the fiscal year 1942 beginning July 1, 1941 up through April 30, 1942. The figures include all new work awarded, consisting of all new contracts, letters of intent and extensions of existing contracts. Letters of intent were the informal (but nonetheless binding) contracts awarded to a manufacturer in order to authorize him to get started on the work in advance of the time when detailed contracts terms or prices could be worked out. They were often used when specifications were not completed, when it was necessary to finance the contractor immediately, or when the detailed terms—including often intricate payment provisions and delivery schedules—might take a long time to negotiate.

($1,000,000's)

	1941						1942			
	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.
Total dollar amount of awards	$662.8	342.1	565.6	414.1	487.1	1,026.3	1,372.9	2,927.5	2,202.9	1,953.8
Expenditures	.....	.....	.....	$450	400	700	600	700	1,100	1,200
Total number of awards over $50,000	541	473	434	587	604	749	1,083	1,085	1,344	1,727

[fol. 170] 11. The above figures are further broken down by Bureaus as follows:

($1,000,000's)

	1941						1942			
	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.
NOd contracts (signed by Secretary—primarily facilities vessels)										
$ Amount	$73.6	40.0	121.8	79.9	4.9	50.0	37.9	6.3	10.1	33.7
No. over $50,000	32	31	40	26	7	23	21	15	15	38
NOrd Contracts (BuOrd)										
$ Amount	$12.3	23.7	13.2	11.0	61.5	27.2	58.7	35.9	99.4	138.4
No. over $50,000	8	9	8	22	36	26	25	27	70	87
NOs, NXs Contracts (BuSandA)										
$ Amount	$306.3	247.2	372.8	228.7	281.8	724.0	747.7	2,344.4	1,254.5	1,135.5
No. over $50,000	351	340	318	404	362	477	670	657	735	1,070
NOy Contracts (BuY&D)										
$ Amount	$264.4	25.9	55.4	100.3	110.4	101.4	143.4	145.1	184.2	331.5
No. over $50,000	128	66	80	120	167	180	230	251	380	326
NObs Contracts (BuShips)										
$ Amount	.....	.....	.....	$0.9	5.5	119.5	361.7	315.8	628.4	230.8
No. over $50,000	.....	.....	.....	2	15	26	61	78	96	116
NOa Contracts (BuAero—only facilities)										
$ Amount	.....	.....	.....	.....	$21.6	2.9	5.4	71.3	21.0	66.1
No. over $50,000	.....	.....	.....	.....	11	4	14	20	27	26
NOm Contracts (Marine Corps)										
$ Amount	$6.2	5.4	2.4	2.2	1.6	4.3	18.2	8.7	5.1	9.4
No. over $50,000	22	27	8	13	6	13	56	37	21	55

Throughout this ten-months' period, the Bureau of Supplies and Accounts executed all contracts for the articles specified by the Bureau of Aeronautics (except facilities) and for a great many of the articles specified by the other Bureaus. In September and October 1941, the Secretary delegated his power to execute negotiated contracts to the Chiefs of the several Bureaus; this fact accounts for the change in distribution of the contracts awarded following such months.
[fol. 171] iii. Decline in use of competitive bids

12. The following table shows the predominance of the negotiated contract as compared with contracts let after competitive bids during the period in question:

($1,000,000's)

	1941						1942			
	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.
Competitive bids	$96.9	78.4	88.9	87.5	101.1	121.8	112.1	73.7	67.9	107.2
Negotiated contracts (including letters of intent and extensions of existing contracts)	$505.1	250.6	457.1	311.4	362.0	869.2	1,222.2	2,803.2	2,112.6	1,835.3

Under the old competitive bid contract, used prior to the emergency, there was almost no pricing problem—the contract was awarded to the lowest bidder. It is true that a modified system of competitive bids was used in the award of many negotiated contracts; the Department would request several manufacturers to submit, more or less informally, their estimated prices. The manufacturer submitting the low price would, other conditions being equal, receive the bulk of the Department's order for the item to be procured. In many cases, the Department would negotiate contracts with all of the manufacturers submitting prices; the high bidders would receive contracts for lesser quantities than the low bidders. Under this modified form of bidding, however, there was some negotiation in the arrival at the final contract price, and pricing was much more of a problem than it had been under the earlier system of competitive bidding.

iv. Dollar amount of letters of intent

13. The progressive increase in the use of letters of intent indicates the pressure which was being put upon contracting officers. The following table demonstrates the increasing reliance upon letters of intent:

[fol. 172]

(1,000,000's)

	1941						1942			
	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	April
Total contracts awarded	$662.8	342.1	565.6	414.1	487.1	1,026.3	1,372.9	2,927.5	2,202.8	1,953.8
Letters of intent	$124.9	20.6	80.1	33.0	23.1	249.6	628.8	2,408.6	1,416.5	860.7
Previous months' letters of intent superseded by contracts executed	.....	.....	.....	.....	$48.2	57.6	26.1	53.7	223.7	297.9

The use of letters of intent in the Bureau of Ships is particularly striking:

Bureau of Ships—Contracts Awarded

($1,000,000's)

	1941	1942			
	Dec.	Jan.	Feb.	Mar.	Apr.
Total contracts awarded	$119.4	361.7	315.7	628.4	230.8
Letters of intent	$119.4	361.7	313.5	628.4	225.8
Previous months' letters of intent superseded by contracts	$0.3	.....	6.1	.....	.....

14. In conclusion, the contract figures for the fiscal year 1942, from July, 1941 until the passage of the renegotiation statute, show (1) a great increase in the amount of materiel contracted for, (2) virtual abandonment of competitive bidding as a method of awarding contracts and (3) an increasing use of the letter of intent.

b. General Factors Making Close Prices Difficult

15. A number of factors complicated the procurement programs at this time. These factors were more or less inevitable with the outbreak of war and the huge spurt in procurement.

i. Lack of experience

16. The enormous increase in procurement tells its own story. The Navy Department had no experience enabling it to cope with the problem of fixing close prices under the [fol. 173] new procurement programs. Contractors were being asked to produce items in quantities never before contemplated. Thus, in late 1940 and early 1941, contracts for vessels were let in quantities exceeding those of the first World War, and in early 1942, these quantities were still again increased. A single contract for one ordnance item (5" gun mounts) which had theretofore not been made outside Government gun factories, called for a quantity of such items in excess of the total number previously made in this country in the gun factories. Many other examples could be cited.

17. Contractors were called upon to manufacture new items which had never before been produced—such items as radar equipment, new plane and vessel designs, floating drylocks, and Bofors and Oerlikon guns. Specifications for some items were not completed until the contract was per-

formed; the requirements for other items were changed constantly through the life of the contract.

18. Many contracts were long-term contracts which extended for more than one year. The majority in dollar volume of combatant ship contracts were contracts for twelve months or more. Similarly, most of the contracts for construction of public works and facilities, and for air frames and engines were long-term contracts. The bulk in dollar amount of contracts let for these items in the *fiscal* year 1942, prior to passage of the renegotiation statute, ran until 1942 or 1943. Almost all aircraft and construction contracts were let on a cost-plus-a-fixed-fee basis. Of the contracts for vessels, a larger dollar amount were made on the fixed-price basis, but these fixed-price contracts were made subject to adjustment and escalation in respect of direct labor and material costs.

[fol. 174] 19. Contracts were awarded to many contractors, particularly in the aircraft industry, in amounts tens and even hundreds of times greater than their capital investments.

ii. Problems in building up procurement personnel and organization

20. For the fiscal year 1940, obligations of Navy appropriated funds totalled approximately 1.1 billion dollars; for the fiscal year 1941, obligations were about 12.7 billion dollars, (note the table in paragraph 9 above). In fiscal 1942 total obligations were 23.2 billion dollars, with obligations in the second half of such fiscal year (i. e., the first half of calendar 1942) amounting to 17.2 billion. The dollar volume of obligations incurred in the first six months of 1942 was comparable to the dollar volume of obligations incurred in the preceding two and one-half years (2.8 billion dollars less). The great jump in contract obligations which took place in the second half of 1940 was largely due to the great expansion in shipbuilding authorized in mid-1940, and, to a somewhat lesser extent, to the expansion in plane authorizations and construction of public works and facilities.

21. Within two years, the procurement machinery of the Navy had to be stepped up to the point where it could turn out, in a six-months' period, contracts for munitions for

about thirty-one times the dollar amount of the obligations incurred in the first half of 1940 (approximately $0.55 billion—50% of the $1.1 billion commitments recorded for the twelve months of fiscal 1940—as compared with $17.2 billion in the first six months of 1942). The difficulties of turning out the contracts for the widely diversified items procured by the Navy (from battleships to buttons, from planes to pork products) increased rather in a geometric progression as the dollar amount of Navy needs and the [fol. 175] number of Navy contracts necessary to fulfill such needs multiplied.

22. The Navy Department started its emergency procurement program in June, 1940, with personnel adequate to handle one billion dollars of procurement per year; it was impossible, within the year and one-half which followed, to build up the personnel who could handle procurement at the rate of 34 billion dollars per year (17.2 billion dollars for the first half of 1942), and at the same time achieve close pricing on the munitions for which contracts were being written. Even if there were in the country enough persons skilled in procurement problems and analysis of costs to undertake to fix close prices on munitions, such persons would have had no background of experience in the prices of a large proportion (if not most in dollar volume) of the items procured by the Navy. Not only was the Navy Department purchasing many items which had never before been made by the contractors, but it was also purchasing items in such quantities in 1941 and early 1942 that previous price experience was almost useless as a guide.

23. It is most important to recognize that pricing was only one of the factors which had to be considered by the Navy Department in expanding its procurement. The enormous increase in the number of technical personnel—engineers, architects, designers—required to handle the specifications for Naval material can be understood readily enough. Another factor too often overlooked is the mechanical problem of getting out completed contracts. The Bureaus, which prepared all of the contracts, had to set up entirely new contract organizations. The coordination of procurement by the Bureaus became increasingly difficult—what had been relatively simple when procurement was at the rate of one billion dollars a year became extremely com- [fol. 176] plex when procurement jumped twelvefold, and

then twenty-three fold. Many different efforts at coordination were made; the agencies most responsible for unifying contract polices—the Procurement Legal Division of the Under Secretary's Office and the Office of Procurement and Material of the Secretary's Office—were not established until July, 1941 and January, 1942, respectively. Organizations to assist contractors—in obtaining priorities, solving labor problems, building facilities, securing capital—all had to be established and manned, and it took time for such organizations to acquire the necessary know-how. Other organizations were required to coordinate Navy procurement policies and procedures with the policies and procedures of other Government agencies, to prevent the competition for contractors which helped to demoralize the early procurement of World War I.

24. The Navy Department had made a fair beginning towards solving these many problems at the time war was declared. The declaration of war, however, at the same time rendered imperative the immediate functioning of all of the agencies necessary to handle the procurement problems, and also made the problems much more acute. Through all of the process of organization for wartime procurement, the contracts had to be turned out, and in far vaster quantities than theretofore. One partial solution, of course, was the issuance of letters of intent rather than the more formal contracts, which could be worked out thereafter. The figures which I have cited earlier indicate the extent to which this device was used in the period under consideration. The use of letters of intent, however, merely postponed the day when the more formal contract was to be written; and at several times the backlog of letters of intent became perilously large. And the problem of pricing [fol. 177] still remained when letters of intent were used. The Department did issue some letters of intent under which prices were fixed, but as a general rule, the letters of intent were silent as to prices, with the understanding that prices would be set later in the definitive contract.

25. The Navy Department was struggling, throughout the year and one-half prior to passage of the renegotiation statute, to obtain personnel to get out the specifications, to write the contracts, and to aid in the production, of the material required. Indeed, we have not today completely

solved this problem—we still have need of experienced personnel who can take over the constantly changing procurement problems.

iii. Uncertainties as to costs

26. Added to the absolute lack of experience as to the cost of many items and the difficulties inherent in training personnel to meet new problems of theretofore unrivalled magnitude, were the many uncertainties as to certain costs—in 1941 and 1942 the scarcity of materials and of manpower, and rising prices and wages, made particularly difficult the forecasting of costs.

27. The problem of material shortages became acute in early 1942. The predecessor to the War Production Board had been established to administer the priorities authorized by the "Navy Speed-Up Act" of June 28, 1940. The Army and Navy Munitions Board had been working with the War Production Board and its predecessors for one and three-quarter years prior to April, 1942, in enforcing a system of priorities in metals for Government contracts. In the first half of 1942 the armed services and the War Production Board were engaged in working out a system of control much stricter than that theretofore in effect—the Produc- [fo. 178] tion Requirements Plan, which was put into effect on July 1, 1942. The application of all of the priority ratings was an immensely complicated job, which was administered in the Navy Department by the Production Branch of the Office of Procurement and Material. In addition to the metals covered by the priority schedules, there were several other raw materials which were at this time extremely critical because of shipping losses and other factors.

28. At this same time also, manpower shortages were beginning to be felt as the draft was stepped up enormously, although the shortage in manpower became most critical some months later.

29. The armed services had experienced some labor and wage troubles at the plants of contractors. The most acute cases were, of course, those of North American Aviation, Inc., which was taken over by the War Department under Executive Order No. 8773 dated June 9, 1941, and Federal Shipbuilding & Dry Dock Co., which was taken over by the

Navy Department under Executive Order No. 8868, dated August 23, 1941. Wages were rising, from early 1941 onward. In mid-1941, the Navy took the initiative in having the nation's shipbuilders enter into zone agreements with respect to labor. These agreements, while they helped to insure a supply of labor, had the undoubted effect of raising labor costs at most shipyards, including those not covered by the agreements, which tended to raise wages for all shipyard workers. There was also established a shipbuilding stabilization program reimbursement policy, to which the Navy Department, War Department and Maritime Commission adhered; the three agencies have from time to time issued administrative instructions governing reimbursement to shipbuilders of specific labor costs. Zone agreements somewhat similar to those in the shipbuilding [fol. 179] industry were likewise established for the construction and building-trades industries.

30. Wages continued to rise throughout late 1941 and the first part of 1942, and the trend was not effectively checked until after the President's "hold-the-line" Executive Order 9250 (promulgated upon passage of the Second Emergency Price Control Act of 1942 on October 2, 1942) which empowered the President to establish wage ceilings. Overtime charges began to mount in late 1941. As the War and Navy Departments demanded speeded-up production and extra shifts, they promised fixed-price contractors, who had not contemplated substantial overtime wages at the time their contracts were let, that the contract prices would be adjusted in the light of the overtime payments.

31. Scarcity of materials and growing scarcity of manpower made for higher costs to contractors. From the very inception of the national defense program, contractors were fearful of price rises which might wipe out not only their profits under long-term contracts, but also their entire companies. They were therefore insistent upon protection by the Government against such price rises. From the latter part of 1940 on, escalator clauses were demanded with increasing frequency under fixed-price contracts. In 1941 and early 1942, I should judge that the great majority in dollar amount of fixed-price contracts provided escalation in some form or another. Many contractors faced with the production uncertainties which I have outlined above, in addition

to price increases, insisted upon cost-plus-a-fixed-fee contracts to protect themselves.

32. Increases in production and in efficiency were so swift that in many cases the increased costs which had been anticipated and were to be covered by escalation were com- [fol. 180] pletely swallowed up in the greater than anticipated profits earned by contractors. It had been, and still is, generally impossible to forecast accurately the effects upon costs, of increased volume or of the productive efficiency of Navy contractors. In addition to this fact that contingent costs (against which escalation was provided) were offset by unanticipated profits, the fixed price under any contract containing an escalator clause invariably also contained allowances for many contingencies not covered by escalation. Escalator clauses did not provide complete protection against fluctuation in costs; there were at the time many uncertainties as to overhead costs against which the contractor claimed to have no protection except amounts for contingencies included in his contract price. In practice, price escalation worked only upwards, although the escalator clause generally did provide for revision downwards of prices based on direct labor and material costs, as well as for revision upwards thereof. The cost-plus-a-fixed-fee contract was virtually a riskless contract. As the production of so many contractors increased many times over, the return in profits under fees fixed upon the volume of their business amounted to vastly more on their capitalization than had profits prior to the emergency and war periods.

33. Manufacturers demanded protection against the uncertainties facing them; the Navy Department, which had no means of forecasting costs, of necessity had to provide the protection in its contracts in order to obtain the munitions. In general, Navy contractors in 1941 and early 1942 were including in their fixed-price or estimated cost (under cost-plus-a-fixed-fee contracts) allowances for almost all contingencies which could conceivably happen. Almost never did more than a portion of such contingencies happen with respect to a single contractor. In addition, production [fol. 181] techniques improved so much more rapidly than expected with respect to a great many items that actual costs in quantity procurement were far lower than those which might reasonably have been expected.

iv. Navy contracting and pricing personnel

34. As the statistics earlier cited make clear, most of the increased procurement from mid-1940 to April 1942 (and to date) has been accomplished under negotiated contracts. A very substantial proportion of these contracts were cost-plus-a-fixed-fee contracts, including almost all construction contracts and plant contracts; all facilities contracts provided for reimbursement of costs to the contractor. With respect to the fixed-price negotiated contracts, it was necessary to negotiate prices with the contractors on the basis of estimated costs. The cost of performance was to the extent possible based upon past experience, but past costs were generally stepped up by the inclusion of allowances covering the many uncertainties facing the contractor. The contractor would not undertake the work without adequate protection—and the Navy Department had no valid argument, in the light of the uncertainties as to costs facing the contractor, for rejecting allowances for the protection of the contractor. There was always the possibility, of course, that not all of the contingencies against which protection was being provided in the price would occur, but no one in the Navy Department or anywhere else was able to forecast what contingencies would occur and what ones would not. It is true that many of the fixed-price contracts provided escalation for certain costs, but the inclusion of escalation was necessary in such cases to provide the further cushion without which the contractor would not undertake to risk the hazards inherent in a fixed price.

[fol. 182] 35. Prices under contracts awarded after competitive bids were of little aid in determining prices for similar items under negotiated fixed-price contracts. Bidders for Navy contracts submitted bids on the basis of comparative prices and of what they anticipated would be the lowest price, rather than on any very close analysis of costs. In any event, the quantities specified in these earlier contracts and the conditions under which they were let did not afford any precedent for pricing in the later period. With the advent of the negotiated contract, more and more of the nation's industrial capacity was converted to Government work. Competitive forces ceased to have any bearing upon prices—in practical effect, all contracts let were based upon crude estimates of costs, however faulty the

early estimates might be, plus an additum for contingencies and profit. As the House Naval Affairs Committee discovered, prices under negotiated contracts were generally lower than prices for comparable items under contracts let to the lowest bidder.

36. At the beginning of the emergency period (June, 1940), the outlook of the Bureaus relative to prices was slanted almost entirely toward purchasing on the competitive bid basis. The Bureau of Supplies and Accounts continued to award some contracts during this period of early 1942 on the basis of competitive bids. Several of the Bureaus had personnel who dealt with comparative prices, based on past experience; such personnel sought to work out prices with contractors. The Bureau of Supplies and Accounts, which had been purchasing standard items in quantity for years, did have some comparative data on prices, based on the competitive bid awards. But, as procurement vaulted to quantities many times the quantities purchased before the war, this data became increasingly obsolete. It was true that the Stock, Schedule and Statis- [fol. 183] tical Sections of the Bureau kept records of past purchases and that such records would be of value in ascertaining the propriety of a negotiated fixed-price. The other Bureaus had only a handful of personnel engaged in drafting of contracts and pricing thereunder, and began in the latter part of 1940 to build up their contract divisions.

37. The new contracting personnel necessary to handle the increased volume of procurement, gradually gained experience with pricing; their training took time. At the start of the emergency procurement, there was on hand inadequate data as to contractors' costs, and consideration of prices offered by contractors was based largely on comparison with prices paid by the Navy for similar munitions in the past; usually under very different conditions. Past experience naturally offered little guide in the determination of prices to be paid for articles which had never been built before, as we discovered in the cases of destroyer-escorts and anti-aircraft guns, for example.

38. As of April 28, 1942 the Navy Department did not have any working organization whose primary responsibilities were analysis of prices and advice in the negotiation of accurate prices which when compared with costs would

not allow undue profits. The Cost Analysis Section and the Price Adjustment Board had just been established in the Office of Procurement and Material (itself organized on January 30, 1942) attached to the Secretary's Office, and had had little opportunity to accomplish anything in the way of recommending price reductions. There was no agency—and would not be until July or August, 1942, when the Price Negotiation Branch of Supplies and Accounts was set up—which was in negotiating a procurement deal solely [fol. 184] responsible for checking into the contractor's probable costs and for seeking to determine whether the prices submitted should be reduced. A lot of thought had gone into the matter of high prices and excessive profits, and we were slowly moving toward corrective measures which proved to be effective. It is true that before the war, almost half in dollar amount of negotiated contracts were let on a cost-plus-a-fixed-fee basis, or on a cost basis in the case of facilities, and a substantial portion of contracts were still being made to the lowest bidder after solicitation of competitive bids. Past experience was of little assistance in the latter case. Most of the large profits earned by Navy contractors were due to increased volume or ability of the contractor, making a new article with which he was unfamiliar, to reduce his costs promptly, and to allowances for contingencies which did not arise. The Navy Department did not have the pricing experience at this time to deal adequately with these factors. Again I want to point out quite frankly that the Department was primarily interested in getting the munitions as promptly as possible. In the haste to acquire the materiel of war, it had also to expand and develop its procurement organization. The Navy Department had at the time neither the knowledge nor the experienced personnel necessary to achieve close pricing—and indeed, during wartime, it may be doubted whether anything but limited success in negotiating prices to reflect costs can be achieved.

c. Specific Contract Prices During This Period (July, 1941-April, 1942)

39. Naturally, as contractors gained experience, and as the Navy became better able to analyze costs, it has been [fol. 186] possible to negotiate lower prices on a great many items. I have listed some of the factors which made for

high prices and high profits. I submit some actual examples of prices under contracts let during this period and subsequent reductions of these prices.

i. Bureau of Ships

40. The Bureau of Ships was responsible in 1941 and 1942 for the expenditure of a larger dollar volume of appropriations than was any other Bureau (although the Bureau of Supplies and Accounts in the months prior to passage of the renegotiation statute was writing a larger dollar volume of contracts, because of the large number of contracts such Bureau wrote upon requisition from the other Bureaus). The value of ships completed and converted under Navy contracts rose from about $142,146,000 in the second half of 1940, to $720,494,000 in the first half of 1942, to $3,590,509,000 in the first half of 1944. For the fiscal year 1941 (July 1, 1940-June 30, 1941), *expenditures* by the Bureau of Ships totaled $912,000,000, as compared with $3,074,000,000 for the next fiscal year, and $9,384,000,000 for the fiscal year 1944 (June, 1944, estimated).

41. The contracts necessary to fulfill the 11% and 70% expansions of the Navy (authorized by the Congress in June and July, 1940) were largely awarded by the end of the first quarter of 1941. In general, these contracts, which each specified the delivery of a number of combatant ships, were not completed until the latter part of 1942 and 1943. On the average, the following lengths of time are required to complete the several combatant ships:

Battleships	32 to 35 months.
Aircraft carriers	17 to 21 months. (The escort carriers require about 11 months.)
[fol. 186] Cruisers	22 to 25 months.
Destroyers	7 to 13 months.
Destroyer Escorts	7 months.
Submarines	11 months.

42. I have had compiled data on some 13 contracts executed between July 1940 and February, 1941, covering combatant ships. These contracts, all of which were made on a fixed-price basis, subject to adjustment according to

changes in direct labor and material costs, provided a total of $750,097,400 (before adjustment) of contract prices. None of these contracts was completed until late 1942 or 1943. They were completed at a total cost to the contractors of $514,720,566. The total profit under the contracts, disregarding adjustments and disregarding renegotiation and voluntary refunds, would therefore have amounted to $235,376,834, or 45.7% of the cost of performance. The cost of performance included increases in labor and material prices during the lives of the contracts, whereas the contract prices as above stated have not been adjusted upward in accordance with escalator adjustments to which the contractors would have been entitled under their contracts. Since the basic month for escalator purposes was between July, 1940 and February, 1941, and the expenditures were incurred from one to two years later, sharp upward adjustments would have been required if escalation had been computed —it is estimated that such adjustments would have amounted to 10 to 15% of the cost in the case of destroyers, and 15 to 20% of the cost in the case of the larger vessels. As examples of the discrepancies between original unit contract prices and unit costs to the contractor under these contracts, I cite the following:

[fol. 187]

	Number of Ships	Original Unit Price	Average Unit Cost	Difference as Percentage of costs
		Destroyer Program		
1st contract	6	$7,159,700	$5,445,225	31.5
2nd contract	6	6,813,200	4,560,674	49.5
3rd contract	8	5,379,000	4,705,896	14.3
4th contract	5	7,360,000	4,900,245	50.2
5th contract	17	6,813,000	4,425,605	53.9
6th contract	6	5,977,000	4,241,268	40.9
7th contract	4	5,579,000	4,620,142	20.8
		Carrier Program		
1st contract	2	43,662,000	26,625,000	64.0
2nd contract	1	42,725,000	26,500,000	70.6
3rd contract	3	46,125,000	26,600,000	73.4
		Cruiser Program		
	2	19,272,500	14,725,000	30.9
		Submarine Program		
1st contract	13	2,795,000	2,246,761	24.4
2nd contract	25	2,765,000	2,246,761	23.1

At the time of the award of the above contracts, there was an informal understanding between the Bureau of Ships and the contractors that if actual costs proved to be out of line with the prices fixed, some adjustments would be made. In practice, since none of these contracts was completed until after the passage of the renegotiation statute, all were renegotiated under the statute.

43. Both the destroyer-escort program and the landing-craft program were launched in force in early 1942, although the great majority of contracts for these vessels were not executed until after passage of the renegotiation statute. In neither case had the contractors or the Navy Department had any experience with building these new [fol. 188] types of vessels, and original costs were naturally high, because specifications were constantly changing on the early vessels. No contracts for destroyer-escorts were made prior to passage of the renegotiation statute. Work had been begun, however, on several of the vessels and general agreement on an estimated cost of $3,300,000 per vessel was reached in the first part of 1942. All of the contracts for these ships except one was made on a cost-plus-a-fixed-fee basis, and the resulting actual costs of the ships indicate the difficulty of arriving at a fair estimate for an item which has never been made before. Actual costs under eight contracts varied from $1,440,198 per vessel to $2,667,583 per vessel (the next highest being $2,348,578). The total fees fixed on the eight contracts amounted to 11.87% of the actual cost. Under the single fixed-price contract, which provided a unit price of $3,500,000, actual unit costs amounted to $1,809,644, or a profit without renegotiation of 93.4%. As I have earlier indicated, the contractor who took work on a fixed-price basis was entitled to cushions for the many contingencies which might arise and wipe out his profits. There was a definite agreement with respect to the destroyer-escort contracts that as costs were more accurately determined, prices and estimated costs would be adjusted accordingly. The Navy Department was in no position to insist upon the elimination of cushions from the price of a ship which had never before been built, with all of the uncertainties as to costs facing the contractor.

44. With respect to propulsion machinery, I shall repeat an example which was submitted by Secretary Knox to the Congress in April, 1942.[1] Secretary Knox said:

[fol. 189] For example, one of our suppliers with whom we had a contract for 200 destroyer turbines produced the first turbine on our designs at a cost of $2,559,000, which was very substantially above what that company's engineers had estimated the cost would be. After the production of 15 turbines, through economies of operation and increased efficiency, this cost was reduced to $607,000 per turbine. It is now estimated by the company that it will not be until after completion of the seventy-second turbine that the cost will drop to the figure estimated in quoting to the Navy the contract price of $300,000 per turbine. This latter cost the company believes will be stable.

ii. Bureau of Ordnance

45. During this period in question, a very large amount of ordnance items were procured under contracts made by the Bureau of Supplies and Accounts. *Expenditures* by the Bureau of Ordnance increased from $377,000,000 for the fiscal year 1941, to $1,915,000,000 for the next fiscal year and $3,634,000,000 for the fiscal year 1944.

46. Typical of the increases in volume of ordnance procurement is the jump in production under Navy contracts of one antiaircraft gun from approximately 1,000 in the last half of 1941 to about 10,500 in the first half of 1942; another gun jumped from 300 to 1,000 over the same two periods (top production of this item was reached in the second half of 1943 with 3,800 production). Production of Navy ammunition multiplied many times over in 1942.

47. The progressive reductions in prices of two types of antiaircraft guns which had not prior to the present emergency been manufactured in this country is most striking. These guns have been manufactured for the most part by [fol. 190] former automobile manufacturers, who had obviously had no prior experience in their production. The Oerlikon gun (20 mm.) with one type of mount was manu-

[1] Hearings before the House Naval Affairs Committee on H. R. 6790, 77th Cong., 2d Sess., April 16, 1942, page 2022.

factured under one contract made September 9, 1941 for a price of $7,531.42 per gun; under a contract dated January 20, 1943 with another manufacturer, its price had been reduced to $4,519.97, with a still different type of mount, a contract for the Oerlikon guns dated September 22, 1942 specified a unit price of $6,330; the later contract with the same manufacturer dated May 5, 1944 had brought the price down to $3,666. This same type of gun was made without mounts under a contract dated June 8, 1942, fixing a unit price of $4,958.50; the present contract with the same manufacturer dated May 5, 1944 specifies unit prices ranging from $2,133 down to $1,708 as production increases.

48. The Bofors gun (40 mm.) prices show equally astonishing decreases. The original contract dated January 7, 1942 specified a unit price of $4,288 (without mounts); the later contract with this manufacturer dated November 11, 1943 brought the price down to $2,510.

49. Prices of 20 mm. and 40 mm. projectiles have come down to about 50% of the original prices. These items are items as to which the changes in specifications have not presented the problem present with respect to many naval munitions. Quantities produced under Navy contracts have multiplied many times over during the past three years, and the price reductions may be attributed in large part to increases in volume. Production of the 20 mm. shells was begun in June, 1941 under eight contracts specifying unit prices which varied between 21.5¢ and 25.23¢ per shell; the most recent contracts in January and May of 1944 specify prices from 11.2¢ to 14.46¢ per shell. Similarly, pro- [fol. 191] duction of 40 mm. projectiles began in June and July, 1941 under eight contracts with prices ranging from 64¢ to 84¢ per unit; the latest contracts, executed in August and November, 1943 and September, 1944, provide payment of between 43¢ and 50¢ per shell.

50. Prices of other ordnance items have indicated how difficult it is to arrive at a price under the original contracts. One model of gunsight has dropped from $2,638.29 to $1,571.19. A case for depth charges which originally cost the Government $15.07 was later reduced to $10.31. Three-inch gun-barrel forgings were priced at $1,580 under the original contract of May 5, 1941; under the contract dated November 21, 1942, the price had gone down to $1,000.

iii. Bureau of Supplies and Accounts

51. This Bureau purchases all of the standard supplies, hardware, clothing, subsistence items and the like. The Bureau both prepares the specifications and writes the contracts for most standard supply items—hand tools, repair materials, furniture, stock items and the like. In 1941 and 1942 the Bureau of Supplies and Accounts also wrote a great many contracts for the other Bureaus, which drew up the specifications for the items to be procured, negotiated the price, and then sent a "requisition" covering the procurement to the Bureau of Supplies and Accounts to be written up in contract form.

52. Total *expenditures* of the Bureau (for items as to which it both prepared the specifications and wrote the contracts) increased from $563,000,000 in fiscal 1941 to $1,409,000,000 in fiscal 1942 and to $6,127,000,000 in fiscal 1944. These figures include expenditure of very substantial amounts for pay, subsistence and transportation of naval personnel. A very large proportion in dollar amount of [fol. 192] the Bureau's total procurement consists of petroleum products.

53. The prices under Navy contracts of most of the subsistence items and clothing items are so closely related to material costs that volume procurement does not have any appreciable effect upon the prices. I do not therefore present any examples of purchases of either subsistence or clothing items.

54. I shall cite several examples of reductions in the prices of some standard stock items largely as a result of purchasing in large quantities. Thus, twist drills are purchased under contracts for hundreds of thousands of dollars; the unit prices for these drills in different sizes and specifications vary from 8 or 10¢ to several dollars. Prices under a 1944 contract with one manufacturer for assorted lots of drills were 22½% less than prices under a 1942 contract with the same manufacturer. Another item of hand tools—hand taps—are purchased in a very wide variety of sizes and prices. Prices under a 1944 contract for hand taps show a decrease of 20% under the prices specified in a 1942 contract with the same manufacturer.

55. Comparison of prices for sisal rope of a certain specification under two contracts with the same manufacturer shows the following unit prices:

Size of rope	Price per pound	
	1942 contract	1944 contract
¾"	$0.195	$0.1835
1¼"	.19	.1763
1½"	.1825	.1619
4½"	.175	.1547
8"	.175	[illegible]7

The differences per pound are in cents and fractio[illegible] cents; but as the contracts involve several hundre[illegible] [fol. 193] thousands of pounds of rope, these differe[illegible] become quite large in total.

56. The difference is even more substantial in the case of steel cable. One of the early contracts, made in 1941, specified a price for certain ⅛" steel tow cable of $0.051 per foot; the contract for the same type of cable with the same manufacturer in 1944 provided a price of $0.037 per foot—a decrease of $0.014 per foot, or 28%. The later contract required delivery of 30,000,000 feet of cable, so that the total decrease from the original price amounted to $580,000.

57. Paint brushes under two contracts about 10 months apart (both executed in 1944) with the same manufacturer decreased from $2.95 to $2.61 for one size, from $2.67 to $2.34 for another; again, the difference is substantial under a contract for 105,578 brushes.

58. Perhaps a comparison of prices of nuts and bolts under a 1943 contract and a 1944 contract will bring home as cogently as any other comparison the difficulty of close pricing on small standard items. Under the earlier contract, the price for one ½" by 5" bolt and nut was $2.86 per hundred, while the price under the later contract was $2.12 per hundred; the prices for a ¾" by 6" bolt and nut were $7.51 per hundred as compared with $5.30 per hundred. Even more striking is the difference between the prices for a 1" by 5" bolt and nut—$14.90 per hundred under the first contract, and $10.10 under the second.

iv. Bureau of Aeronautics

59. All contracts for aircraft and aircraft components during 1941 and 1942 were drafted and executed by the Bureau of Supplies and Accounts, although prices and terms under these contracts were negotiated by the Bureau of Aeronautics. *Expenditure* of appropriations for which [fol. 194] the Bureau of Aeronautics was responsible increased from $194,000,000 in fiscal 1941 to $1,052,000,000 in the next fiscal year, and $4,696,000,000 in fiscal 1944. Total aircraft accepted (reflecting earlier contracts made) increased 122% from the first half of 1941 to the second half of 1941; acceptances in the first half of 1942 were 210% of acceptances in the preceding six months; and the second half of 1942 saw acceptances more than 200% of those for the first half of that year.

60. The contracts for airframes during this period were, with one exception, all cost-plus-a-fixed-fee contracts. They were invariably long-term contracts, in general extending over 18 months or more. The airframe manufacturers required cost-plus-a-fixed-fee contracts at this time, for their margin of capital in relation to total business was so small that they could not afford to incur any risks. For example, the Grumman Company had a capital of $5,000,000, yet its contracts with the Navy approximated half a billion dollars.

61. In the contracts for both airframes and engines, innumerable changes in specifications are made during the life of the contract.

62. One cost-plus-a-fixed-fee contract for torpedo bomber frames was let on March 23, 1942, at an estimated unit cost (plus fee) per plane of $101,863. This same contract was later converted into a fixed-price contract providing for incentive payments as reductions were made below specified costs, and as of September 30, 1944, the unit redetermined price was $58,050. A cost-plus-a-fixed-fee contract for scout bomber frames was made on February 2, 1942, at an estimated unit cost (plus fee) of $34,019 per plane; the present contract for the same frames is on the basis of $30,160 estimated unit cost. Finally, a contract made May 23, 1942, [fol. 195] on a cost-plus-a-fixed-fee basis provides an estimated unit cost of $63,985 for fighter frames; the most recent contract for these frames (fixed-price adjusted contract) calls for a unit price of $39,000.

63. Similar decreases are evident in the procurement of engines and propellers. Prices under 1941 and 1942 contracts for three different types of engines and two types of propellers, and prices under more recent contracts for the same articles may be compared as follows:

	Old Contract			Latest Contract		
	Date	No.	Unit Price	Date	No.	Unit Price
1st Type Engine	9/10/41	204	$14,500	12/29/43	439	$11,200
2nd Type Engine	7/29/41	2,293	13,151	12/29/43	400	11,051
3rd Type Engine	7/14/41	80	6,522	12/29/43	1,400	5,848
1st Type Propeller	4/ 4/42	259	1,081	12/23/43	583	878
2nd Type Propeller	3/30/42	248	2,266	12/29/43	3,375	1,880

64. The procurement of aircraft components likewise shows striking reductions in contract prices as the items are produced in greater quantities and as mechanical problems are surmounted. The following table shows the reductions in prices which have been effected for some items:

	Old Contract		Latest Contract	
	Date	Unit Price	Date	Unit Price
Motor Alternator	4/27/42	$280.00	5/15/44	$173.00
Starter—1st type	3/ 1/42	370.00	3/ 4/43	333.00
Starter—2nd type	2/ 2/42	355.00	12/ 2/43	290.00
Generator	9/11/41	343.00	7/11/44	229.00
Navigational Watch	5/28/41	30.25	3/23/44	28.45
Oil Pressure Gauge	10/16/41	2.35	11/10/43	1.95
Compass	8/22/40	43.50	4/13/44	35.72

v. Bureau of Yards and Docks

65. The expenditures of the Bureau of Yards and Docks increased from $412,000,000 in the fiscal 1941 to $1,076,000,- [fol. 196] 000 in the fiscal year 1942, and $2,265,000,000 in fiscal 1943. The Bureau's work reached its peak in the second half of 1942, when some $1,768,625,000 of work was reported completed on projects under the supervision of the Bureau of Yards and Docks. The great bulk of this work was done under contracts which had been made prior to passage of the renegotiation statute—indeed, many of them were made in 1939, 1940 and 1941, when some of the large contracts for base projects and advance bases had been let. The Bureau of Yards and Docks supervises construction of industrial facilities under the facilities contracts made by the other Bureaus.

66. The peak in the making of construction contracts and the peak of construction thereunder was reached in 1942.

Commitments for all types of facilities (industrial and non-industrial) for the first half of 1942 totaled $2,742,100,000, for the second half of 1942, $1,420,400,000; expenditures for work completed in these two six-months' periods were $1,275,000,000 and $2,190,000,000 respectively. The bulk of facilities contracts executed in the last six months of 1941 and the first four months of 1942 extended beyond the date of passage of the renegotiation statute on April 28, 1942.

67. It has been estimated that roughly 80% in dollar volume of construction contracts and extensions thereof made by the Bureau of Yards and Docks in fiscal 1942 required over 8 months to perform. Most of the very large construction contracts for construction of new bases extend over more than 12 months. It is of course impossible to compare costs or prices of different construction jobs, although prices of construction materials may be compared.

68. As to items procured by the Bureau of Yards and Docks, I shall cite as examples two items—pontoons and [fol. 197] floating dry docks. The pontoon program was started near the end of 1941 with an order for a few thousand pontoons; the number contracted for multiplied over six times in 1942, and increased in 1943 far beyond what anyone had anticipated. The Bureau procures two major types of pontoons, one of which is procured in numbers about 9 times as large as the other type. Prices have come down as follows:

	1st type	2nd type (procured in the larger quantities)
1941 (includes development costs)	$400	$660
1942	335	370
Late 1942	....	250
1944	270	200

Construction of floating dry docks began in 1941. These were an entirely new item, and extensive changes in specifications and design were made during the life of the early contracts. All of these contracts extended beyond April 28, 1942.

II. Action by the Navy Department with Respect to Excessive Profits

69. The Navy Department in 1941 and the early part of 1942 had only begun to build up machinery for the purpose

of ascertaining and recapturing excessive profits under its contracts. I have pointed out the enormous increase in the number of contracts and in the volume of Navy procurement during this period, and the impossibility of acquiring experienced personnel forthwith to negotiate the best possible prices for the Government. During the period in ques-
[fol. 198] tion (the latter part of 1941 and the first four months of 1942), the Navy Department discovered that some of its contractors were earning very large profits. We endeavored to correct the situations which came to our attention. It proved impossible then to achieve close initial pricing under most Navy contracts. After our experience of the last several years I am convinced that it will always be impossible in wartime to arrive at close prices for munitions, when the Government is uncertain as to the types or quantities of munitions which are needed (and the exigencies of war are such that we are almost never certain as to types and quantities).

a. 1941 Investigations

70. In the first half of 1941, both the House Naval Affairs Investigating Committee and the Truman Committee sent out questionnaires relative to profits to manufacturers and shipbuilders holding Navy contracts. The Truman Committee in June 1941, conducted hearings upon costs and profits under ship contracts and contracts for ship repair and alteration. These investigations brought out the fact that very large profits were being enjoyed by some contractors; the Truman Committee was particularly concerned with profits under ship repair and alteration contracts. Before these Committees had published any reports, however, the Navy Department made efforts to correct some of the contract prices, particularly under the ship-repair contracts. The first step was to make sure that the Bureau of Internal Revenue would treat a voluntary refund by a contractor as a reduction in his contract price and in his taxable income; in response to inquiries by the Navy Department, the Treasury Department in September 1941 indicated that for tax purposes it would so regard such a refund, provided the original contract was modified in writing to indicate the
[fol. 199] reduced price. Thereafter the Treasury further indicated that a refund made after completion of perform-

ance of the contract would likewise be regarded for tax purposes as a reduction of gross income.

71. Mr. Forfestal (then Under Secretary) and Rear Admiral Samuel M. Robinson (then Chief of the Bureau of Ships) in September 1941 requested the Compensation Board to investigate the cost records of contractors who were to complete ships under Navy contracts in 1941 and the first six months of 1942, and to determine what the probable profits in the construction of those ships would be. The Compensation Board was an administrative agency which had been set up by the Secretary of the Navy in the first World War to review costs under cost-plus contracts, and to advise the Secretary generally on amounts claimed by contractors under Navy contracts. Its functions in reviewing costs under contracts had been taken over largely in late 1941 by the Cost Inspection Service of the Bureau of Supplies and Accounts (the Cost Inspection Service was given complete responsibility to inspect costs under cost-plus-a-fixed-fee contracts, except those made by the Bureau of Yards and Docks, by a directive of the Secretary dated February 9, 1942). The Compensation Board planned to have its accounting branch, the Cost Inspection Board, go over the cost records of contractors under outstanding vessel contracts and attempt to estimate what the profits would be under such contracts. It was anticipated that in cases where the profits appeared to be excessive, the Bureau of Ships, acting in conjunction with the Compensation Board, would endeavor to persuade the contractors voluntarily to reduce prices. The Bureau of Ships had estimated that by limiting the investigation to contracts for vessels to be de- [fol. 200] livered prior to July 1, 1942, performance would be close enough to completion so that a fairly accurate estimate of anticipated profits could be made. Both the Compensation Board and contracting representatives of the Bureau of Ships felt that it would be wise to persuade contractors in advance to modify their contracts to allow readjustment in prices to eliminate excessive profits, if possible—a forerunner of the renegotiation clause.

72. The Compensation Board was unable to carry this project to completion. It did begin investigation of costs under the ship contracts, but the outbreak of war and the transfer of the bulk of its cost inspection activities to the

Bureau of Supplies and Accounts cut short the study of excessive profits of naval shipbuilders. The Bureau of Ships, aided by the Cost Inspection Division of the Bureau of Supplies and Accounts, late in 1941 began to carry forward certain of the work projected by the Compensation Board, in that it commenced negotiations with a number of shipyards under the ship repair and alteration contracts for revision of the contract billing rates.

73. At this same time, the House Naval Affairs Committee, acting as a Special Committee to investigate the national defense program, pursuant to House Resolution 162, approved April 2, 1941, was undertaking its study of excessive profits under Navy contracts. The Naval Affairs Committee had in April, May and June, 1941, obtained a list of all contractors with the Navy Department, and it sent out to these contractors a general questionnaire, which required the submission of extensive and explicit information on costs of performance of Navy contracts and profits thereunder. As responses were received from the contractors, supplemental questionnaires drawn to elicit informa- [fol. 201] tion as to a particular industry, were issued to contractors in different industries. The Committee stated that it had in the second and third quarters of 1941 sent questionnaires to 6,899 contractors holding 16,463 contracts. The questionnaires, which required a considerable amount of effort to fill out, aroused a good deal of protest, and also increased interest in excessive profits on the part of both the contractors and the Navy Department. (These questionnaires and the responses thereto are summarized in the Committee's report issued January 22, 1942, H. Rept. No. 1634, 77th Cong., 2d Sess.)

74. By October of 1941 Representative Vinson, Chairman of the House Naval Affairs Committee, felt that the Committee had acquired sufficient data on profits of Navy contractors to indicate the need for corrective legislation. While he indicated to the Navy Department that the questionnaires returned to the Committee showed that most of its contractors were realizing only a fair profit, he stated further that profits under certain contracts represented an "unconscionable percentage" of the contract price. Therefore, on October 7, 1941, he introduced H. R. 5787 (87 Cong. Rec. 7713) to provide for the recapture of all profits under

Government contracts in excess of 7% of the cost of performance thereof. At about this same time, another bill (H. R. 5739) was introduced imposing a flat percentage limitation of profits under war contracts—in this bill 8% of the contract cost. The Navy Department was opposed at this time and later to the revival of any percentage limitation of profits, such as that contained in the Vinson-Trammell Act. It had had the experience under the Vinson-Trammell Act with such type of profit limitation, and the officials responsible for procurement in the Department were confident that any reenactment of such a limitation [fol. 202] would impede the procurement programs.

75. Some consideration was given within the Department in the last several months of 1941 to the best method of limiting profits by administrative action. The only concrete results of this consideration were the readjustments effected by the Bureau of Ships in payments under the ship repair and alteration contracts. These contracts were in effect requirement contracts—i. e., contractor agreed to perform, for compensation based upon reimbursement of cost of materials and a fixed price per man-hour of work, all orders for ship repair or alteration work which might be placed with him by the Navy Department. Around the 1st of December 1941, the Bureau of Ships began to seek voluntary reductions in rates from the shipyards. Between December 1, 1941, and April 1, 1942, the Bureau in effect renegotiated 27 ship repair and alteration contracts, representing a very substantial portion of the outstanding number of such contracts. At hearings before the Senate Naval Affairs Committee on profit limitations late in January and early inn February of 1942, Captain Claud A. Jones (Assistant Chief of the Bureau of Ships) indicated that the Navy had recovered about $2,000,000 in profits by renegotiation of the ship repair and alteration contracts.[2] This figure does not, of course, indicate the savings which would accrue in the future by reason of the renegotiation of such contracts.

76. The work of renegotiating the prices under these contracts was spurred by publication on January 15, 1942, of

[2] Hearings before the Senate Naval Affairs Committee on H. R. 6355, S. 2027, 77th Cong., 2nd Sess., Page 7.

the Truman Committee's report, which covered among other things profits under Navy contracts for shipbuilding and ship repair and alteration. On January 22, 1942, the [fol. 203] House Naval Affairs Investigating Committee issued its first report on the defense program, which dealt extensively (409 pages including appendices) with the matter of profits under Navy contracts.[3] While the Committee noted that average profits under the contracts let by the several Navy Bureaus were not too much out of line, it did indicate some examples of extremely high profits. These profits were unduly high despite the excess profits tax. The whole report dealt with profits in terms of percentages of the contract price. It pointed out that the percentage of profits on sales was greater under uncompleted contracts than under completed contracts, and "that as the defense program progresses, the profits to the contractors are increasing and will tend to increase unless steps are taken to halt the trend." Much emphasis was placed upon this report by the Navy officers responsible for procurement. It also received very wide publicity at the time; the newspapers were full of editorials about the prevention of war profiteering, and the procurement officials of the Navy Department spent a considerable amount of time over the next several months in seeking to devise some more effective means of administratively limiting profits under Navy contracts.

b. Study and Suggested Solutions within the Navy Department, February-April, 1942

77. From the end of January, 1942 on, the efforts of Navy procurement officials to find some solution to the problem of policing of costs and profits were redoubled. While no formal organization had been set up to deal with the matter, several groups were devoting most of their time to an investigation of ways and means for limiting profits. [fol. 204] The procurement personnel of the several Bureaus worked closely with the investigating personnel of the House Naval Affairs Committee, and were instrumental in suggesting to the committee most of the contractors whose profits were so large as to merit further investigation. The Department was during this same period at-

[3] House Report 1634, 77th Cong., 2nd Sess.

tempting to work out a sound organization to handle the entire procurement problem, let alone the matter of war profits. It was on January 30, 1942, that the efforts towards coordinating the divergent procurement activities of the several Bureaus culminated in the establishment of the Office of Procurement and Material in the Secretary's Office.

78. At the Under Secretary's request I devoted a large part of my efforts during the months of February, March, and April, 1942 to working out some means of curbing profits under our contracts which would not interfere with the more important objective of obtaining the munitions and supplies required by the Fleet. I spent a great deal of time during this period in discussing this problem with representatives of the Procurement Branch in the newly formed Office of Procurement and Material, the contracting branches of the several Bureaus, and the accounting personnel in the Bureau of Supplies and Accounts. During these three months the Under Secretary also brought into the Department several men with wide business experience who looked into the entire matter of profits under Navy contracts and who subsequently became members of the Price Adjustment Board (established several weeks prior to passage of the renegotiation statute). The problem of the right way (if there were any "right" way) of handling the problem, was, however, still very much in the formative stage—it was not then possible to set up any more definite organi-[fol. 205] zation to handle the matter of closer pricing and excessive profits. In February we held several discussions with representatives of the Army procurement services as to the best cure for excessive profits, and considered a proposal to include in war contracts clauses under which the contractor agreed to consider adjustment or renegotiation of the contract prices.

79. Early in March, I submitted to the Under Secretary, on behalf of the Navy group which had been studying the problem, some tentative conclusions. It was the consensus, first, that the Navy Department must continue to rely upon the "profit motive" as an important factor in inducing war production, but that nonetheless, excessive profits had a bad effect on public and military morale and also tended to encourage demands for wages increases and decreases in labor efficiency. With respect to the proposal to limit prof-

its to a flat percentage of the cost of performance of contracts, it appeared probable that industry would insist upon a floor under losses if it were to be subjected to a ceiling upon profits. This floor under losses could be accomplished only under a cost-plus type of contract, which was expensive to supervise and audit, tended to reduce efficiency, and often permitted very high profits on a yearly basis; and the 7% limitation on the fee allowed under such contracts, while low for some businesses, permitted very high returns for other businesses. The amount of manpower and effort required to audit such contracts or to administer the flat percentage type of limitation under fixed-price contracts would be enormous and probably could not be drafted if this limitation were put into effect. With respect to excess profits, it was our position that corporations must be permitted to retain some portion of their profits in order to [fol. 206] preserve the influence of the profit motive and in such event the amount of profits before taxes in view of the extraordinary ballooning in some industries was often so large as to leave excessive profits even after taxes. There was no easy answer to the problem of effective profit control. It was my view at that time that we should attempt to do as much as we could by starting at the very beginning—in the negotiation of contract prices. The Government should be represented in such negotiations by experienced and skillful negotiators who would endeavor to see that the maximum of effort was produced at the right price. We realized then that in the light of all of the imponderables, even skilled negotiators would be unable to achieve close pricing in many instances. It was recommended to the Under Secretary that experienced price negotiators be placed in each of the contracting Bureaus. This suggestion was discussed at considerable length in various meetings and bore fruit several months later in the establishment of a Price Negotiation Section in the Bureau of Supplies and Accounts, which was ultimately extended to all of the Bureaus of the Navy Department.

80. At about this same time (early March, 1942) as a result of our several discussions within the Department, consideration was given to a proposed directive to be signed by the Secretary with respect to the allowance of reasonable profits on fixed-price negotiated contracts. It was pro-

posed that prices be fixed to allow a profit of 6% generally but up to 10%, of the estimated cost of the contract, to be determined on the basis of cost data and financial statements submitted by the contractor—in short, an embodiment in each contract of the Vinson-Trammell type of limitation, applied in advance. The directive was discussed in considerable detail on March 13, 1942, by representatives [fol. 207] of the several Bureaus, the Special Assistant to the Under Secretary, Vice Admiral Robinson (Chief of the Office of Procurement and Material), and myself. We were agreed at this meeting that the proposed directive would tie the Navy Department completely to the percentage limitation of profits concept, with all of its inherent deficiencies. We therefore decided that we would not recommend that any such directive be signed by the Secretary at this time, and that we would attempt further to devise some effective means of control of profits within the Department. One feature of the proposal was revived several weeks later —namely, the requirement that the contractor submit statements as to the estimated cost of performance of his contract and other financial data in connection with the performance of Government contracts. Some time thereafter this did become the standard practice.

81. At this same time the War and Navy Departments and the War Production Board had been working upon the establishment in each of the three agencies of cost analysis sections, which would be able to point out profit danger spots and suggest administrative remedies therefor. On March 17, 1942, representatives of the Office of Procurement and Material who had participated in these discussions circulated a proposed outline of procedure for the establishment and workings of such sections. This suggestion provided for the close coordination of the proposed cost analysis sections in the three agencies, and provided further that the War Production Board would attempt to supply a check on the selection of contracts for cost analysis so that the program would not put an unmanageable burden upon the accounting offices of the three Departments. After further discussion of ways and means, the cost analysis sections were set up about three weeks later. [fol. 208] The War Production Board was to function primarily in analyzing the cost reports prepared by the War and Navy Departments.

82. In the latter part of March Messrs. Kenneth H. Rockey and Sylvan Coleman came into the Department at the Under Secretary's request to study the whole matter of excessive profits and closer pricing. Messrs. Rockey and Coleman went over the rather substantial data which we had by this time accumulated and spent considerable time with the contracting officers of the several Bureaus in reviewing contracting procedures and the methods then available for determining whether or not excessive profits were being earned. Both of them took a very active part in the discussions which were then occupying most of the time of the group studying the matter of excessive profits. When the Navy Price Adjustment Board was established about April 20, 1942, Mr. Rockey was made its Chairman and Mr. Coleman was made a member of the Board.

83. In the course of our study, some of the cases of excessive profits enjoyed by subcontractors were brought to our attention. We learned of several instances in which the prime contractor with the Navy Department had given subcontracts to one of its subsidiary companies, and had included in its cost figures under the prime contract allowances for profits of subsidiary contractors. We sought to require representations by the prime contractor which would prevent any repetition of such practice. Of course, we recognized that any scheme of percentage-profit limitation tended to favor high profits for subcontractors; the prime contractor would not be interested in keeping subcontract costs or prices low, since the higher such costs or prices were, the higher the base on which his percentage of profits would be figured. Also, there were some instances [fol. 209] where work was subcontracted directly and the fee of the subcontractor was added to the fee of the prime contractor to make for double profits on the same work.

84. During the last week of March, 1942, the House Naval Affairs Investigating Committee held hearings on excessive profits being earned by several large Army and Navy contractors. These hearings were extensively reported in the newspapers, and the large profits earned by the Continental Motors Company and of Jack and Heintz received particular attention. The Naval Affairs Committee had received most of its data on these contractors from a joint audit which had theretofore been undertaken by the Army and Navy. The hearings had the helpful result of producing a

number of meetings between Army and Navy representatives for joint consideration of the best means of limiting excessive profits. At such a meeting on March 25, 1942, it was concluded that each Department should have available an organization to which would be reported all cases wherein it was suspected that contractors were earning excessive profits. The meeting envisioned that these organizations would function about as follows:

a. All procurement officers would be advised of the establishment of the two organizations, and requested to refer to them for further investigation cases of excessive profits.

b. A conference would be called between the contractor and representatives of all Government agencies holding contracts with such contractor. At this conference, the profits would be considered with a view to obtaining for the Government a return of profits deemed excessive or a reduction of the contract price by the amount of such profits, whichever might be appropriate.

[fol. 210] c. The meeting contemplated that in the cases of recalcitrant contractors, resort might be had to compulsory orders under Section 9 of the Selective Training and Service Act; and further that in appropriate cases full publicity would be given to the excessive profits and the action taken.

The March 25th meeting further determined that immediate action along the lines indicated would be taken jointly by the services in the case of Continental Motors. In general, the War and Navy Departments were agreed that each case should be dealt with on an individual basis, although at the outset it might be advisable to approach a group of contractors (perhaps those mentioned at the hearings of the House Naval Affairs Investigating Committee) and to deal with them in a body. It was agreed that the proposed action would be reported to the Congress to indicate the bona fide efforts being made by the War and Navy Departments to achieve answers to the problems of excessive profits. This meeting really represented the birth of the Price Adjustment Boards.

85. The War and Navy Departments thereafter discussed with the War Production Board this proposal to set up bodies to investigate war profits. Growing directly out of these discussions was the proposal that a Presidential

Board be appointed to serve throughout the war for the purposes of studying the experience of other nations as to profit limitation, formulating a comprehensive program for the prevention of excessive profits, suggesting legislation and procurement policies as deemed appropriate, and dealing with special difficult cases. The proposal contemplated that Congress, the Army and Navy and other war procuring agencies would be able to look to such Board for guidance and advice.

[fol. 211] 86. By the time this matter was brought up for consideration, however, H. R. 6790, the revival of the Vinson-Trammel percentage limitation, had been introduced (March 16, 1942); and Representative Case had introduced his amendment to H. R. 6868, providing for the renegotiation of contract prices to eliminate all profits above 6% (March 28, 1942). These proposals were discussed with representatives of the Army and the War Production Board, and representatives of the Navy presented to the House Naval Affairs Committee and to the Senate Finance Committee our views with respect to them, and commented upon the several revisions of the renegotiation proposal which were submitted to us.

87. The passage of the Second War Powers Act, 1942, on March 27, 1942, afforded an additional weapon to the Navy Department and the other war procuring agencies in the investigation and determination of excessive profits. Title XIII of this Act allowed the agencies, when so authorized by the President, to inspect and audit the books and records of their contractors and to require such financial data as they desired. The President, by Executive Order 9127 dated April 10, 1942, delegated this authority of investigation and audit to the procuring agencies, subject to certain conditions. The Departments were enabled to go into the plant of any contractor and require the submission to them of all information as to profits.

88. The Cost Analysis Section and the Price Adjustment Board were formally organized in the Office of Procurement and Material about April 20, 1942, and were specifically called to the attention of all procuring officers of the Department by a memorandum circulated on April 24, 1942.

[fol. 212] 89. The informal group which had preceded the formal establishment of these two organizations, the Bu-

reau of Ships and the Cost Inspection Division of the Bureau of Supplies and Accounts, had meanwhile in the first four months of 1942 continued to readjust and renegotiate contract prices. The accomplishments of the Navy Department in reducing prices up through June of 1942 were summarized in the report of the House Naval Affairs Investigating Committee of July 22, 1943.[4] The Committee had obtained the names of specific contractors investigated and a great deal of the data on the excessive profits which they were enjoying, from the Departments. The Committee included in its report a summary of the "actual monetary savings to the Navy Department" as a result of renegotiation of contracts. It indicated that the Navy had effected such savings to the extent of some $88,000,000. While the Committee did not so indicate, the great bulk of this amount constituted reductions in contract price rather than returns of cash received by the contractors. Furthermore, as the Committee did point out, the renegotiations effected at that time would later show substantial results in lowering prices on new contracts for the munitions for which the original contracts had shown excessive profits. With respect to the ship repair and alteration contracts, the Committee remarked that refunds under these contracts amounted to $7,000,000 (which is to be compared with the $2,000,000 which had been recovered by the end of January, according to Captain Jones' testimony). As the volume of ship repair and alteration work had increased under these contracts, profits had expanded rapidly under rates which had been fixed in the absence of any adequate experience in this type of work. Under contracts of this type, the Bu- [fol. 213] reau of Ships had been fairly successful in renegotiating profits to allow no more than 10% of costs (as compared to an average profit on such contracts prior to their readjustment of 30% of their cost of performance).

90. I am unable to present any concrete figures from the Navy Department as to the total cash refunds of profits by Navy contractors prior to April 28, 1942. Apparently all of the cash refunds were collected by means of deductions from vouchers; no record had been kept of any such deductions, and it would be an interminable undertaking to examine the vouchers under each contract in the anticipation

[4] H. Rept. No. 2371, 77th Cong., 2d Sess., pp. 26-32.

that they might reveal voluntary reductions in price. In addition, any recapitulation of the cash refunds would not show the whole picture, for most of the savings to the Government in the elimination of excessive profits were effected by means of price reductions.

c. Consideration of the Percentage Profit Limitation Proposals

91. Meanwhile, the Congress had been considering several proposals to impose a percentage limitation of profits upon Government contracts, and there appeared at the time to be a very strong chance that such a method of limitation would be enacted by the Congress. These proposals, to which the Navy procurement officers were unalterably opposed, naturally spurred the efforts within the Department to arrive at a solution to the profit limitation problem. On March 16, 1942, there had been introduced in the House H. R. 6790, which proposed among other things to limit profits on all Navy contracts to 6% of the cost of performance thereof. The bill was referred to the House Naval Affairs Committee, which held a number of hearings upon it in late March and April 1942.

[fol. 214] 92. Both Mr. Forrestal and Col. Knox testified with respect to H. R. 6790. Mr. Forrestal called attention to the vast amount of auditing work which would be necessary to enforce any such limitation, and discussed our experiences under the Vinson-Trammell Act. The Secretary, who testified on April 16, 1942, brought out the immense variety of factors which affected profits under a particular contract and the impossibility of any single cure for excessive profits applicable to all contracts. He pointed out one very important consideration which the Congress had not thus far emphasized—the importance of reducing costs to the Government as well as profits. As he suggested, high costs and reduced profits often went hand in hand, and high costs could be much more expensive to the Government than high profits.

93. The Navy had had some experience in the difficulties of obtaining good accountants and auditors to handle the growing dollar volume of cost-plus-a-fixed-fee contracts. In early 1942, there were in the Cost Inspection Service of the Bureau of Supplies and Accounts, which audited costs un-

der these contracts, some 2700 accountants (most of whom were stationed outside Washington); in addition there were a substantial number of accountants in the Bureau of Yards and Docks, which audited its own construction contracts. H. R. 6790 proposed to have costs under Government contracts determined by reference to Treasury Decision 5000 (the regulation under the Vinson-Trammell Act), which was then used as a guide for auditing costs under the cost-plus-a-fixed-fee contracts. The determination of costs was a burdensome and time-consuming job, and there were substantial differences of opinion as to what items were properly allowable costs. The complete post-[fol. 215] audit of expenditures under the cost-plus contracts by the General Accounting Office, after audit by the services, further complicated the difficulties of administering the cost-plus-a-fixed-fee contracts. It seemed clear that there would not be enough accountants in the nation to scrutinize costs under every Government contract, as contemplated by H. R. 6790, in the same way that costs were scrutinized under the cost-plus contracts.

94. H. R. 6790 was tabled in committee, for the renegotiation bill had been brought to the fore by the Congress. Section 403 of H. R. 6868, as reported out by the Senate Appropriations Committee, contained in subsection (f) a graduated range of percentage limitations to be applied to Government contracts of different size. Representatives of the Navy Department joined the representatives of the other war procuring agencies in discussing this subsection with the Senate Committee, which ultimately agreed that the percentage limitation feature should be deleted.

d. Maximum Price Controls

95. The matter of price controls upon munitions was considered by the Under Secretaries of the Navy and War and the Price Administrator in late 1941. They decided at such time that it would not be necessary to set up any formal machinery for handling differences of opinion between the armed forces and the Price Administrator with respect to prices, but that each problem would be handled as it arose. The situation was changed substantially by the approval on January 30, 1942 of the Emergency Price Control Act of 1942. The armed services had in the consideration of the bill which became the Price Control Act recommended that

munitions be expressly exempted thereunder, but their sug-
[fol. 216] gestion was rejected. The possible imposition of maximum price ceilings on munitions pursuant to this Act was a rather unsettling factor in the whole discussion of possible methods for control of profits during the next several months. At the time of passage of the Act, the Price Administrator had not determined upon a policy as to the establishment of ceilings for the purpose of preventing war profiteering and of controlling prices under contractors for war materiel. On the day the renegotiation statute was approved—April 28, 1942—the Office of Price Administration issued its "Big Freeze" order, the General Maximum Price Regulation, and its Machinery and Parts Regulation (Maximum Price Regulation No. 136). The coverage of these regulations included a great many items of completed munitions and almost all components thereof, although certain specified munitions were to be exempted from the price ceilings established under the Regulations. Broadly speaking, the General Regulation fixed the price ceilings by reference to the prices in effect during March 1942, and required specific authority from the Office of Price Administration for the fixing of ceilings where there were no analogous March 1942 prices; and the Machinery and Parts Regulation fixed ceilings by reference to the prices in effect October 1, 1941, and also required specific authority from the Office of Price Administration in cases where there were no analogous October 1, 1941, prices.

96. The issuance of these regulations precipitated an immediate and prolonged discussion between the armed services and the Office of Price Administration as to the desirability of fixing price ceilings for munitions and their components. As a stop-gap measure, the Price Administrator postponed application of the regulations to sales and
[fol. 217] deliveries under Army and Navy contracts until July 1, 1942. In the latter part of May 1942, the Under Secretary of the Navy established a liaison office in the Bureau of Supplies and Accounts, which was to integrate the price policies of the Navy Department and the Office of Price Administration insofar as possible.

97. It had been the position of the Army and Navy in all of their consideration of price control that it would be unwise and impracticable to apply price regulations to strictly military and naval equipment, and that attempts

to do so ran the risk of impeding procurement of such equipment. It was felt that the services responsible for war procurement must have final power over prices; such services were charged with full responsibility for procuring the articles with which to fight the war, and proper prices might well be an inextricable element in such procurement. In the latter part of July 1942 the Under Secretaries of War and of the Navy notified the Price Administrator that while they recognized the necessity of adopting all possible means to prevent inflation, they felt that it was necessary to exempt military and naval supplies from the application of price ceilings. The Under Secretaries pointed out the difficulties inherent in effectively applying ceilings to munitions—e g., the wide variety of conditions and uncertainties faced by contractors, the changes in specifications, inexperience of contractors, necessity of using all contractors and procuring all items regardless of cost. They further pointed out the probable impediment to production and procurement which the imposition of price ceilings would bring about, the undesirability of divided authority with respect to procurement, and the uncertainty and delay which would result from the application of the price regulations to Army and Navy contracts. Finally, they re- [fol. 218] quested that "all articles which are designed and produced exclusively for military uses, and all subassemblies and parts of such articles which are themselves designed and produced exclusively for such military articles" be exempted from price regulation by the Office of Price Administration, with the exception of articles subject to regulation prior to June 30, 1942; that in questionable cases exemption be granted upon certification by the Secretary of War or of the Navy that the exemption was necessary for the prosecution of the war. The Under Secretaries pointed to the authority to renegotiate contract prices under the recently enacted renegotiation statute as a means at their disposal of controlling excessive profits and preventing inflation.

98. After further consultation, the Price Administrator responded in September 1942 by indicating that he would not extend maximum price control in the area of strictly military goods, provided he received assurances that the Army and Navy would use their powers to control both prices and profits in the exempted areas. He further indi-

cated willingness to consider any requests for exemption of particular items at that time under formal price regulations. The Office of Price Administration agreed not to extend price control to sales of strictly military goods. It was understood that the exact line of demarcation between military and non-military goods would have to be more precisely drawn after conferences among the three agencies. The War and Navy Departments accepted the proposal as drawn by the Price Administrator, and agreed to furnish his Office with such information as it requested on the prices and procedures of the two Departments. Thereafter the armed services did establish divisions which furnished to [fol. 219] the Office of Price Administration all information on prices requested by such Office.

99. Prior to the passage of the renegotiation statute, the top Navy officials in charge of procurement had spent a very considerable amount of time in seeking to evolve some answer to the extraordinary difficult problem of limiting war profits while at the same time executing the vastly accelerated procurement programs.

100. There was virtual unanimity of opinion that the percentage limitation of profits was not a solution to the Navy problem—experience indicated that it was not effective and that it made contractors hesitant to take Government contracts. Indeed, it made many manufacturers want to become subcontractors rather than prime contractors. The limitation of adequate accounting personnel was an even more compelling practical reason for the rejection of this means of profit control. Similarly, we had neither the inclination nor the necessary personnel to extend the use of the cost-plus-a-fixed-fee contracts to fields wherein we were able to use fixed-price contracts. We knew from actual experience that exorbitant profits were being earned despite the recoveries under the excess-profits tax. The proposal to subject munitions to price ceilings had been seriously considered by the time of passage of the renegotiation statute, although the matter was not settled until the latter part of 1942.

101. The Navy Department was, then, in early 1942 in the position of opposing the known and theretofore attempted methods of limiting war profits, either because some of them were ineffective or because others would in the opinion of those responsible for procurement seriously interfere

with war production. We would quite frankly have preferred at this time to work out our own administrative solution to the problem of limiting profits under Navy [fol. 220] contracts, primarily through analysis of costs and closer pricing. The solution proposed by the Congress in the renegotiation statute, however, appeared to us to be a much better method than any alternative statutory method available. In retrospect, I believe that it is the better approach and that our earlier preference would not have solved the problem.

III. Navy Contract Forms and Clauses

102. The advent of the negotiated contract completely changed the form of the Navy contract and made necessary the use of much more intelligence and skill in the preparation of contracts.

103. Contracts awarded to the highest bidder after solicitation of competitive bids had all been based upon Forms 32 and 33 prescribed by the Procurement Division of the Treasury Department for all Government agencies. Such forms of contract, with their boilerplate provisions, were satisfactory only for simple deals, and proved quite inadequate for negotiated contracts. The first break away from these restrictive forms came in the preparation of construction contracts and contracts for the construction or installation of industrial facilities (in 1939 and 1940). In developing provisions for the facilities contracts—financing the contractor, purposes for which the facilities were to be used, rights of the parties upon the termination of the emergency period, and the like—it was obvious that the contract would have to be tailor-made to fit the particular arrangement. Furthermore, in the course of drafting these various provisions to fit the procurement transaction, the boilerplate provisions were scrutinized and were often improved or made more appropriate. The grant of authority to negotiate certain contracts for vessels and supplies (June 1940) further accelerated the process of critical [fol. 221] amination of the contract provisions and the drafting of intelligible new provisions to meet particular needs.

104. After enactment of the First War Powers Act, 1941, and the promulgation of Executive Order No. 9001, the

Secretary removed entirely the restrictions of Form 32 in the preparation of negotiated contracts. The Secretary's directive of December 28, 1941, established a new internal Navy procedure for clearing contracts negotiated under the War Powers Act; in addition, it delegated to contracting officers complete discretion with respect to the form of such contracts, except for certain specified provisions required by statute or executive order. Under this delegation of authority, contracting officers were granted complete discretion to make advance, partial, and other payments on account of the contract price,

> • • • without limitation as to amount and irrespective of any provisions of law as to security, liens (except as [to the lien in favor of the Government as permitted by the Act of August 22, 1911, 34 U. S. C. 582]) or otherwise, except that advance payments should be carefully scrutinized to determine whether such payments are necessary for the satisfactory performance of the contract in accordance with the terms thereof and as much security by means of controlled accounts or otherwise shall be provided for as may be expedient under the circumstances of each case.

The directive further specified:

> Such contracts [under the War Powers Act] may be made with or without competitive bidding as the respective contracting officers in their discretion may de- [fol. 222] termine. There shall be no limitations or restrictions as to form and substance of such contracts except [the contract clauses required by statute or executive order].
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> The contracting officers are authorized to select such procedures in making contracts as are deemed best fitted to the purchases involved and the needs of the Navy.

105. At this time all instructions relative to contracts were in the form of individual directives by the Under Secretary to the Bureau Chiefs, who transmitted such instructions to the officers under them responsible for preparing contracts. Since the great majority of Navy contracts were made by the Bureaus in Washington, these directives could

be rather informally issued and distributed. In general, they gave a wide degree of discretion to the Bureaus in the preparation of contract provisions. As we began to pay more close attention to prices and the elements which went into prices, it became necessary to issue more detailed instructions relative thereto; it was not until October 1943, however, that we were able to collect the contract directives in one place, arrange them, and issue them in a loose-leaf volume (the Navy Procurement Directives).

106. I shall summarize very briefly the more or less common Navy contract provisions prescribed in the first several months of 1942 for the determination or adjustment of prices or costs.

i. Changes

107. All Navy contracts included provisions for changes in the work covered thereby. The changes clause in all Bureau of Ships contracts was broader than that in other contracts made by the Navy.

[fol. 223] The Bureau of Ships clause provided:

> The Secretary of the Navy, at any time and without notice to the sureties, may make changes in this contract including the General Provisions, the plans or specifications of this contract, *within the general scope thereof*.

This type of clause had been in ships contracts since the 1880's. The broad language of the clause had, by construction, been somewhat limited in scope. The clause was eliminated about a year ago, and the ships contracts now contain provisions limiting changes to the work under the contract, as in other Navy contracts.

108. With respect to changes in price upon a change in specifications or in the work under the contract, the more or less standard clause for fixed-price contracts provided that if the changes caused an increase or decrease in the cost of performing the contract, "an equitable adjustment" would be made and the contract modified in writing accordingly; facilities and cost-plus-a-fixed-fee contracts provided that upon the making of changes "an equitable adjustment of the estimated cost and the fixed fee would be made and the contract modified accordingly." In the event of failure to agree upon a change in the fixed price or fixed

fee, the matter was to be decided by the contracting officer pursuant to the disputes clause of the contract. The cost-plus-a-fixed-fee contracts for vessels provided specifically that if the estimated costs were changed as a result of changes in specifications, the fixed fee, which was stated to be about 7% of the estimated cost, should be changed by 7% of the change in the estimated cost.

ii. Payments

109. The contracts provided specific procedures for submission of invoices covering costs under cost-plus and facil-[fol. 224] ities contracts, and for prices of goods delivered under fixed-price contracts. These provisions varied substantially among the different types of contracts.

110. Fixed-price contracts for vessels called for partial payments as construction of the vessel progressed. The provisions for advance payments under fixed-price contracts specified that a lien should be established in favor of the Government on the materials and property acquired by the contractor. In some instances controlled accounts were established, providing a check by the contracting officer upon the advance payments to the contractor; the advance payments clauses were at this time relatively simple as compared to clauses presently in use.

iii. Insurance and bonds

111. All contracts required the contractor to carry insurance on the property produced or acquired thereunder, and to carry workman's compensation and other third-party liability insurance with respect thereto. The Government generally undertook to make the contractor whole for losses sustained in excess of the amounts covered by insurance taken out at the direction of the contracting officer.

112. After passage of the War Powers Act, performance and other bonds were largely dispensed with, although they were still required for certain standard supply contracts made by the Bureau of Supplies and Accounts. In any event, the performance, payment and similar bonds had never been of much use to the Navy. It had invariably proved impossible to obtain bonds at any cost in the cases where they were most needed. Generally the cost of bonds was high and the amounts of coverage in the case of large

contracts were entirely inadequate to protect the Government.

[fol. 225] iv. Patents

113. Whenever patents were involved in the procurement, the standard clause of the Treasury Procurement contracts was used—the contractor agreed to hold the Government harmless against claims for infringement of patents in the performance of the contract. Some ships contracts contained the further requirement that the contractor not pay any sum for royalties or patent rights not included in the ordinary purchase price of parts embodied in the ships, unless and until duly so authorized by the contracting officer. No real progress was made in the matter of controlling royalties and other payments relative to patents under Navy contracts, and in drafting patent clauses which adequately protected the interests of the Government, until after the Procurement Legal Division was authorized to handle such matters in August, 1942.

v. Termination

114. Navy contracts (except Bureau of Ships contracts) at this time provided that in the event of cancellation for the convenience of the Government, the Navy would pay the contractor for all costs, including a proper allocation of overhead expense to the contract, incurred up to the time of termination, plus an allowance of 6% or 7% profit on all such costs except purchases of materials and unfinished goods, for which the contractor was reimbursed at cost. This provision differed from the clause then used by the Bureau of Ships and the Army, which calculated the profit on the estimated extent of completion of the contract—the contractor was paid a percentage of the total profit equal to the percentage of completion. The use of any clause was a vast improvement over the practice in the first World War, when contracts did not contain any termination clauses.

[fol. 226] 115. Navy contracts, other than ships contracts, also had included clauses authorizing termination for default, corresponding to the delays-damages clause of the old Treasury Form 32—if the Government terminated for default in delivery, it had the right to purchase the goods

elsewhere and surcharge the contractor for any additional costs incurred by reason thereof by the Government.

116. After the First War Powers Act, the Navy dropped almost entirely the liquidated-damages clause. At this time there were frequent delays due to changes in specifications, material and labor shortages and the like, and it was often if not usually difficult to hold the contractor responsible for delays in deliveries. In addition, contractors were extremely reluctant to take contracts containing such clauses. As the Navy was interested in getting the goods themselves, and not money damages, it determined to omit this clause generally.

vi. Guarantees

117. Most contracts in early 1942 contained a clause under which the contractor undertook to guarantee for a certain period the performance or durability of the articles covered by the contract in conformity with the specifications. This period varied from 3 months to a year or more. The contractor further undertook to correct or repair at his own expense any deficiencies or failures in the contract articles during such period. The ship contracts provided for trials, and adjustments and corrections by the contractor of the vessels during such trials. If the contract was a fixed-price contract, the contractor would often include large contingencies in his prices to cover possible expenses during the guarantee period. Since 1943 and 1944 the period of the guarantee has been shortened, and the clause [fol. 227] has been entirely eliminated in a few cases from Navy contracts.

vii. Escalator clauses in fixed-price contracts

118. Most fixed-price contracts for any substantial amount in late 1941 and early 1942 contained provisions for adjustment in price upon changes in material or labor costs. I should estimate that a majority in dollar amount of fixed-price contracts executed during this period contained escalator clauses. These clauses varied substantially in scope and in the index selected to measure increases in costs.

119. Some of the more primitive types of clauses had attempted to protect the contractor to the full extent of any cost changes. Almost all of the clauses in use at the

time the renegotiation statute was being debated, however, attempted to protect the contractor not against all variations in the cost of labor and materials, but only against such changes in those costs as might be attributed to general changes affecting the entire national economy and thus wholly beyond the contractor's control. The basis for calculating changes in costs under the escalator clauses were in most cases indices representing wage levels (either general or for a specific industry) and material costs, usually indices published by the Bureau of Labor Statistics.

120. The most important determination in any escalator clause was the selection of the base to which the percentage of change in a selected index is applied in order to calculate the permitted adjustment of the contract price. The base selected varied widely among the several contracts, and was often extremely complicated to compute—requiring in some cases substantial cost accounting. All of the escalator clauses are rather complicated to apply. The computations under most of them were made by the Cost In- [fol. 228] spection Service of the Bureau of Supplies and Accounts. We have subsequently discovered certain errors in the drafting and application of certain clauses, whereby increases were computed on costs including the price increases against which the escalator clause was designed to protect the contractor. We corrected such increases as they were called to our attention.

121. All escalator clauses are to some degree inflationary and are harmful in that respect. The device had many disadvantages—it was used only because the Navy could not persuade contractors to take contracts on any other basis. Because of the uncertainties as to labor and other costs and the impetus to inflation which any war provides, contractors refused to run the risk of being tied to a fixed-price under a long-range contract. Escalator clauses were to be used only in long-term contracts. Our need for munitions was so great, however, that we could not quarrel very much over inclusion of such provisions. It must not be assumed that because an escalator clause was included in a contract, the price fixed therein did not include any allowance for contingencies. As has been made quite evident later, the price did include substantial allowances for contingencies. Furthermore, as I have indicated, the escalator clause was not a complete answer to the contractor's in-

sistence upon protection. The clause purported to protect him only against certain direct labor and material price increases and did not protect him against other labor and material costs or other indirect costs which were subject to real fluctuation. The device was an imperfect one which it was necessary for us to adopt in order to speed procurement. Even with the elimination of the risks covered by the escalator clauses, contractors were able in some instances to make profits aggregating 50% or more of cost, as witness [fol. 229] the ships contracts which I earlier cited.

122. On January 30, 1942, the Emergency Price Control Act was approved. The adjusted increases in contract prices under the escalator clause had to stop at any ceilings established by the Price Administrator on articles purchased or produced under the contract. At that time it was not known just how the Act would affect price escalation; subsequently specific escalator clauses have been worked out for contracts covering certain materials subject to OPA ceilings.

IV. Necessity of the Renegotiation Statute

123. Had the renegotiation statute not been enacted, I am convinced that Navy procurement would have been affected in the following ways, among others:

a. greater use of cost-plus contracts;

b. enforced use of mandatory orders to obtain munitions with respect to which agreement on price could not be reached;

c. reluctance on the part of contractors to take prime contracts, including preference for subcontracts; and

d. excessive profits and waste.

These probable results are to a large degree all tied together. We should have found it more and more difficult, I believe, to allow the large contingencies demanded by contractors in fixed-prices, and should therefore have been driven to a much wider use of the cost-plus-a-fixed-fee contract and the mandatory order. I have earlier described the lack of incentive to reduce costs which is inherent in the form of the cost-plus-a-fixed-fee contract, and the large number of auditing personnel required to determine allowable costs under such contracts. Mandatory orders con-

stitute a somewhat ponderous means of procurement, and [fol. 230] leave the Government with the pricing problem still on its hands, plus possible court proceedings. There can be little doubt but that profits would generally have been larger in the absence of renegotiation. After a study of the complex problem of limiting profits in war to fair and reasonable amounts—the problem both as we faced it in the past and as we have faced it in this war—I know of no other type of profit limitation which can take into consideration the many diverse factors affecting the profits of different contractors and fairly adjust those profits, as adequately as does the renegotiation process. The growing Congressional and public criticism of exorbitant war profits in 1941 and 1942 would have resulted in an increasing reluctance on the part of manufacturers to take war contracts, and eventually in some form of profit limitation less palatable and less equitable than renegotiation. I am strongly of the opinion that, while the Government should consistently seek to improve its negotiating procedures in arriving at close prices, the problems of war procurement render impossible any completely satisfactory solution of the problem of initial pricing. Renegotiation, which affords a review of prices after the contractor has had the cost experience in the performance of his contracts, is to my mind an essential part of wartime procurement, today as well as in early 1942.

(S.) H. Struve Hensel.

Sworn and subscribed before me this 11th day of June, 1945.

(S.) Lucille Holland, Notary Public, D. C.

My Commission expires Sept. 1, 1946.

[fol. 231] IN UNITED STATES DISTRICT COURT

[Title omitted]

[File endorsement omitted]

AFFIDAVIT OF MAURICE HIRSCH—Filed June 11, 1945

Maurice Hirsch, Colonel, General Staff Corps, being first duly sworn, deposes and says:

I am the Chairman of the War Contracts Price Adjustment Board and of the War Department Price Adjustment Board.

The general responsibility for and supervision over the methods adopted for elimination of excessive profits in War Department cases has been delegated by the War Contracts Price Adjustment Board to the Secretary of War, and, by intermediate delegations, has been further delegated to the Chairman of the War Department Price Adjustment Board.

In each instance in the War Department in which there is a determination of excessive profits an investigation is made by or on behalf of the Chairman of the War Department Price Adjustment Board to determine which of the statutory methods for eliminating such profits are available in the case under consideration. If the investigation discloses that such profits can be eliminated by withholding sums which might otherwise be owing from the United States to the person who realized the profits, steps may be taken accordingly. If the investigation discloses that the profits can be eliminated by ordering prime contractors with the United States to withhold for the account of the United States amounts which such contractors might otherwise pay to the person who had realized the excessive profits, the appropriate withholding orders may be issued. But if the investigation discloses that neither of these remedies [fol. 232] is available it is then the policy to eliminate the excessive profits by referring the matter to the Attorney General for the purpose of instituting a suit on behalf of the United States to recover the amount of such excessive profits.

An investigation has been made by the War Department with respect to the possible methods for the elimination of the excessive profits found to have been realized by Aircraft & Diesel Equipment Corporation during its fiscal year ending November 30, 1943. The investigation has failed to

disclose that there are any sums now owing from the United States to the Corporation and, accordingly, the excessive profits cannot be eliminated by withholding sums otherwise payable from the United States to the Corporation. The investigation has disclosed, however, that there are contractors doing business with the United States who owe various sums of money to the Corporation. It has been decided that the interests of the Government will be served by issuing withholding orders to two or possibly three of such contractors and it has accordingly been determined that the collection method to be adopted in this case will be the issuance of withholding orders to two or possibly three of such contractors. If this method of collection does not result in a discharge of the claim a recommendation will be made to the Attorney General that suit be brought by the United States against the Corporation to compel payment of the claim.

(S.) Maurice Hirsch, Colonel, General Staff Corps, Chairman, War Contracts Price Adjustment Board and Chairman, War Department Price Adjustment Board.

Sworn and subscribed before me this 9th day of June, 1945.

(S.) Anna C. Lanigan, Notary Public, D. C. (Seal.)

My Commission expires June 15, 1946.

[fol. 233] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF GEORGE T. WOFFORD, JR.—Filed June 15, 1945

George T. Wofford, Jr., being first duly sworn, deposes and says:

I am a Major in the Army of the United States, and am the Acting Chief of the Board Panels Section of the War Department Price Adjustment Board. In that capacity, I have charge of forwarding to contractors the statements of facts and reasons upon which unilateral determinations of excessive profits are based, as required by the 1943 Re-

negotiation Act, where the contractors have made appropriate requests for such statements.

On June 9, 1945, I inclosed the original of the attached statement dated 8 June 1945 with the original letter dated 9 June 1945, addressed to Aircraft & Diesel Equipment Corporation, a copy of which letter is likewise attached hereto, in a franked government envelope and duly sealed the envelope. The envelope was addressed to Aircraft & Diesel Equipment Corporation, 4401 N. Ravenswood Avenue, Chicago, Illinois. I then duly deposited that envelope, containing the aforesaid inclosures, in a mail box regularly maintained by the United States Government at The Pentagon, Washington 25, D. C. There was at the time of said deposit, and has been at all times here in question, regular [fol. 234] communication by mail between The Pentagon and the above stated address of Aircraft & Diesel Equipment Corporation.

(Sgd.) George T. Wofford, Jr., Major, A. U. S., Acting Chief Board Pra elsSection, War Department Price Adjustment Board.

Sworn and ubscribed before me this 12th day of June, 1945. (S.) Edward L. Davis, Notary Public, D. C. (Seal.) My Commission expires July 14, 1946.

[fol. 235] EXHIBIT "A"

To: Aircraft & Diesel Equipment Corporation, Chicago, Illinois, Fiscal Year ended 30 November 1943

In accordance with the provisions of subsection (c)(1) of the Renegotiation Act, you are hereby furnished a statement showing, for your fiscal year above set forth, the determination of excessive profits for said fiscal year and the facts and reasons upon which the determination was based. This statement is final only in the event that the determination by order to which it relates is final.

1. DETERMINATION OF EXCESSIVE PROFITS.

Pursuant to the provisions of the Renegotiation Act it has been determined by order dated 11 January 1945 that of the profits received by or accrued to you during said fiscal year under contracts and subcontracts subject to re-

negotiation the amount of $1,265,000 constitutes profits which should be eliminated.

2. Summary of Relevant Facts.

a. Financial Statement

There are attached hereto exhibits numbered 1, 2, and 3, containing the following information:

"Exhibit 1" contains comparative balance sheets prepared from those furnished by you and indicates your financial position as of the end of the fiscal year ended 30 November 1940 and as of the end of each fiscal year thereafter to and including 30 November 1943. [fol. 236] "Exhibit 2" contains comparative income statements prepared from those furnished by you for the fiscal periods ended 30 November 1937 to 30 November 1943 inclusive.

"Exhibit 3" is a reconciliation of the figures for the year ended 30 November 1943 shown on Exhibit 2 to the information submitted by you.

b. Other Facts Related to the Determination.

1. Efficiency of Contractor

The dollar amount of total net sales during the year ended 30 November 1943, before adjustment for the renegotiation refund, was approximately 11.8 times the average for the base period years 1937-1939. It represented an increase of about 31% over the unadjusted total of sales for the previous fiscal year. Unit production figures are not available for comparison but the Contractor is recognized as having produced in 1943 large quantities of high quality precision products. Prompt delivery schedules were maintained and rejections were held to a low rate. Cost comparisons are difficult because of the wide variety of products manufactured and the different specifications under which similar products may have been produced. On the basis of available data, however, it was concluded in renegotiation that the Company was somewhat better than a medium cost producer. Its unit costs in 1943 were recognized as being lower than in 1942, although there is no evidence that this was due to any factor other than increased volume.

2. Reasonableness of Costs and Profits

The Contractor's selling and advertising expenses for 1943 were low in relation to the year's sales. Officers' compensation, on the other hand, was considered exorbitant and 45% of the amount paid was disallowed in renegotiation. The $150,000 of officers' compensation which remained [fol. 237] equalled 4.2% of sales and was thought to be a liberal allowance for services performed.

The Company's dollar volume of sales in 1943 amounted to $3,549,000 of which $3,520,000 was determined to be renegotiable. This compares with the Company's average total sales amounting to $347,000 for the years 1937 through 1939. For the year ended 30 November 1942, the Company had renegotiable sales amounting to $2,446,000 before adjusting for a refund amounting to $775,000.

The Company's profits on renegotiable sales during 1943 amounted to $1,526,000 before taxes or 43.3% of sales. This compares with average profits amounting to $38,000 before taxes or 12.7% of sales for the base years 1937-1939. For its 1942 fiscal year the Company realized profits on its renegotiable sales amounting to $972,000 or 39.7% before taxes and before adjustment. After adjusting for a refund of $775,000 for that year the Company's profits on renegotiable sales before taxes amounted to $197,000 or 11.8% of adjusted sales.

The Company's renegotiable sales volume for 1943 after renegotiation was 7.5 times its average sales volume for the years 1937-1939. The Company's profits on renegotiable sales for 1943, after renegotiation and before taxes, was 6.9 times total average profits realized for the years 1937-1939.

The Company's wartime and peacetime products are essentially the same. It manufactures Diesel injection equipment and a variety of custom made precision parts. The operations of the Contractor are in effect those of a completely equipped machine shop capable of doing all types of work. The major war time production problem of the Company has been the necessity for meeting a greatly in- [fol. 238] creased demand for its regular line products.

3. Amount and Source of Capital

The Company began the year under review with a net worth (adjusted by the renegotiation refund for 1942) of $450,000. No new capital was added during 1943 except

from profits. There was retired during the year $65,500 of 5% notes, representing the unpaid portion of $100,000 of notes issued in 1940 by the present management to acquire control, and other loans amounting to $33,000. There was also retired during 1943, after payment of $79,624 accrued dividends, 8.520 shares of $1 par preferred stock. These disbursements aggregated $247,000 or over 50% of the beginning net worth. The Corporation's gross plant account at 30 November 1943 was carried at $441,000, of which $115,000 was covered by Certificates of Necessity. Amortization charged on the latter amounted to $22,000 for 1943 and the Company's net plant account at the year end after deduction of amortization and depreciation reserves amounted to $299,000 compared with a net plant account amounting to $292,000 at the beginning of the year.

During 1943 the Company was assisted through use of $150,000 of customer-furnished DPC machinery. This was equivalent to about 25% of total facilities and was used in the production of about 25% of total business. The Company had no V loans, received no advance payments nor any other financial assistance during the year under review.

The Company's cost on renegotiable sales in 1943 amounted to 99% of its total cost of sales. Based upon the allocation of 99% of initial net worth to renegotiable business the Company's profit on renegotiable business before renegotiation and taxes amounted to about 340% on such allocated net worth, and to 58% after renegotiation and before state and federal taxes.

[fol. 239] 4. Extent of Risk Assured

The Contractor invested about $23,000 in additional facilities during 1943, all of which were covered by Certificates of Necessity. Since 1940, total purchases have aggregated approximately $150,000, of which $120,000 are covered by Certificates of Necessity. Depreciation and amortization charged by the Contractor in 1943 totaled $39,000. Included in this amount is $22,000 which represents the amount of amortization of emergency facilities which were covered by Certificates of Necessity.

The Company's wartime business has not involved any substantial increase in investment in plant facilities. Accordingly, no substantial problems of reconversion to pre-war business have been created. A substantial amount of

DPC facilities were furnished by prime contractors. Inventory is largely covered by orders, and the turnover is rapid in relation to the cost of sales. The major part of materials used were furnished the Company without charge.

The Contractor assumed no particular risk with respect to pricing. Its prices in general were competitive, however, and some price reductions were made on repeat orders. Basic profit for the year ended 30 November 1943 before refund amounted to 43.3% of sales and for the previous fiscal period renegotiated the Company had a profit margin before renegotiation of 39.7%.

5. Contribution to the War Effort

The Company's primary contributions to the war effort were the quantity and quality of its production. Also, it cooperated fully with its principal customers, making available to them upon request its designs, drawings and manufacturing technique in order that they might produce similar parts for themselves or obtain them from other shops. The Company's low rejection and scrap record effected savings in critical material and manpower. It made no particular engineering or developmental contributions.

[fol. 240] 6. Character of Business

The Company is a well-integrated custom machine shop performing manufacturing processes of above average complexity. As is indicated from the fact that material cost amounted to only 12% of the total cost of sales, considerable value was added in manufacture. A large part of production materials used, principally steel bar stock, forgings and castings, were supplied to the Contractor without charge. The value of this customer furnished material was considered to be substantial although an accurate total was not supplied in renegotiation. Turnover of beginning net worth of approximately 7.5 times in the year under review was relatively high for this type of business. It reflects in considerable measure the worth of facilities furnished the Contractor by its customers.

3. Reasons for the Determination.

The above facts and the statutory factors considered as indicated above were the basis for the following conclusions and reasons for the determination as specified in paragraph 1.

The combination of such factors indicates that in the year under review the Contractor's principal contribution to the war effort consisted of the production of its peacetime products in increased volume. The Contractor's conversion and reconversion risks were thus limited. The major portion of productive materials used were furnished the Contractor without charge which held inventory risks to a minimum. The Contractor added high value in manufacture and was given credit on this account. Its performance was rated from good to excellent, indicative of efficient operation.

Government facilities accounted for nearly one fourth of total production. The emergency facilities provided by the Contractor were for the most part covered by Certificates of Necessity. No V loans or financial assistance of any kind was provided the Contractor in the year under review. [fol. 241] Manufacturing operations conducted were of above average complexity and the Contractor accepted difficult work which had been refused by other shops. Base period earnings were given only limited significance in this case although it is noted that after renegotiation but before taxes on income the Contractor will have realized profits on its renegotiable sales for 1943 which are many times the average profits realized for 1937-1939.

In comparison with the expenses of manufacturers of similar volume and of similar items, the Contractor's controllable expenses, other than Officers' compensation, were considered reasonable. Renegotiable profits after adjustment but before Federal taxes represented 58% on the allocable net worth at the beginning of the year 1943 and also represented 11.6% of adjusted renegotiable sales as indicated on Exhibit 2 attached.

This determination was based on the facts outlined in the above statement and after full consideration of all information supplied by the contractor, both written and oral, and of the factors referred to in subsection (a)(4)(A) of the Renegotiation Act. In view of the above facts, factors and information, the determination is considered just and equitable.

War Department Price Adjustment Board, Maurice Hirsch, Colonel, General Staff Corps, Chairman.

[fol. 242]

EXHIBIT 1

Aircraft & Diesel Equipment Corporation

Comparative Balance Sheets

(000 Omitted)

	November 30			
	1943	1942	1941	1940
Current Assets				
Cash	$350	$631	$47	$17
Notes & Accounts Receivable	336	294	87	29
Tooling Cost Due from U. S. Govt.	....	45	....	....
Inventories	298	206	189	93
Total Current Assets	$984	$1176	$323	$139
Current Liabilities				
Notes and Accounts Payable	$26	$122	$100	$72
Accrued Expenses	70	85	47	27
Payroll Deductions	24	4		
Net Cost of 1942 Renegotiation	204	204		
Reserve for Federal Income Taxes—net	407**	658**	91	
Total Current Liabilities	$731	$1073	$238	$99
Net Working Capital	$253	$103	$85	$40
Property, Plant & Equipment—net*	299	292	322	273
Prepaid & Deferred Expenses	23	22	14	13
Other Assets	113	42	60	81
Total	$688	$459	$481	$407
Less: Other Liabilities		9	98	161
Total Net Assets	$688	$450	$383	$246
Net Worth:				
Preferred Stock	$25	$33	$33	$33
Common	300	300	300	300
Paid—In Surplus	198	259	259	259
Earned Surplus	465**	158**	91	(46)
Total	$988	$750	$683	$546
Less: Goodwill, Designs, etc.	300	300	300	300
Total Net Worth	$688	$450	$383	$246
*Property, Plant & Equipment:				
Defense Plant Facilities:				
Buildings	$28	$22		
Machinery & Equipment	92	78	77	
	$120	$100	$77	none
Regular Facilities:				
Land & Buildings	$92	$91	$91	$90
Machinery & Equipment	229	223	275	270
	$324	$314	$366	$360
Total Property, Plant & Equip.—Gross	$441	$414	$443	$360
Less: Reserves for Deprec. & Amortiz.	142	122	121	87
Total Property, Plant & Equip.—Net	$299	$292	$322	$273

**Taxes are shown per audit reports, rather than at amounts per tax returns; however, taxes per audit have been adjusted to extent of surplus adjustment at 11/30/45 based on Revenue Agent's Report.

(Here follows, Exhibit 2, side folio 243)

[fol. 243]

EXHIBIT 2

Aircraft & Diesel Equipment Corporation

Comparative Statement of Income

	Year Ended November 30, 1943					Year Ended November 30, 1942			
	Before Renegotiation			After Renegotiation		After Renegotiation			
	Renego'ble Business	Non-Reneg. Business	Total	Renego'ble Business	Total	Renego'ble Business	Non-Reneg. Business	Total	1941
Sales (Less Allowances, Discounts, etc.)	3,519,825	29,020	3,548,845	2,254,825	2,283,345	1,671,329	260,148	1,931,477	1,105,107
Cost of Sales (Less Discounts)	1,726,535	13,925	1,740,460	1,726,535	1,740,460	1,269,542	149,729	1,419,271	721,630
General, Admin. & Selling Expenses	267,452	2,184	269,636	267,452	269,636	183,161	142,451	325,612	130,161
Operating Profit	1,525,838	12,911	1,538,749	260,838	273,749	218,626	(32,032)	186,594	253,316
% of Sales—Line 1	43.3%	44.5%	43.3%	11.6%	12.0%	13.1%	.....	9.7%	22.9%
Other Applicable Items									
a. Interest Paid	3,353	27	3,380	3,353	3,380	10,401	1,104	11,505	23,794
b. Other Applicable Deductions	.....	.....	.....	.....	.....	11,300	1,200	12,500	.....
c. Other Applicable Income	(3,504)	(28)	(3,532)	(3,504)	(3,532)	.....	.....	.....	.....
Basic Profit Before Adjustment	1,525,989	12,912	1,538,901	260,989	273,901	196,925	(34,336)	162,589	229,522
Renegotiation Adjustments	.....	.....	.....	.....	.....	.....	.....	.....	.....
Basic Profit for Renegotiation—Fixed Price	1,525,989	12,912	1,538,901	260,989	273,901	196,925	(34,336)	162,589	229,522
% of Sales—Line 1	43.3%	44.5%	43.3%	11.6%	12.0%	11.8%	.....	8.4%	20.8%
Other Income	.....	.....	.....	.....	.....	.....	.....	.....	(680)
Other Deductions	.....	1,979	1,979	.....	1,979	.....	6,222	6,222	.....
Renegotiation Adjustments—Net	142,293	1,158	143,451(A)	142,293	143,451	.....	.....	.....	.....
Profit before Provision for Taxes on Income & Extraordinary Reserves	1,383,696	9,775	1,393,471	118,696	128,471	196,925	(40,558)	156,367	230,202
Provision for Federal Taxes on Income—Gross	.....	.....	1,089,389	.....	95,171	.....	.....	.....	97,925
Post-War Refund of Excess Profits Tax (Credit)	.....	.....	71,118	.....	.....	.....	.....	102,000(E)	.....
Net Profit before Extraordinary Reserves	.....	.....	375,200	.....	33,300	.....	.....	54,367	132,277
% of Net Worth at Start of Period	.....	.....	83%	.....	7%	.....	.....	14%	54%
Provision for Extraordinary Reserves	.....	.....	[redacted]6,930(B)	.....	.....	.....	.....	.....	(6,425)(C)
Net Profit per Contractor	.....	.....	[redacted]2,130	.....	33,300	.....	.....	.....	138,702

(A) Composed of:

Disallowed Salaries	$126,052
" Amort.	517
" Bad Debts	16,882
	$143,451

(B) Taxes per returns filed in excess of Provision in audit.

(C) Additional assessment for Federal Income Taxes recorded on books in 1943 year.

(E) Estimated.

( ) Indicates loss.

Years Ended November 30			
1940	1939	1938	1937
487,493	187,323	204,560	509,252
423,114	163,545	156,689	296,939
78,412	45,409	26,042	86,031
(14,033)	(21,631)	21,879	126,282
.....	.....	10.7%	24.8%
13,210	4,129	2,532	3,502
.....	.....	.....	.....
.....	.....	.....	.....
(27,243)	(25,760)	19,347	122,780
.....	.....	.....	.....
(27,243)	(25,760)	19,347	122,780
.....	.....	9.4%	24.0%
(565)	.....	(687)	(11,718)
.....	225	.....	1,288
.....	.....	.....	.....
(26,678)	(25,985)	20,034	133,210
.....	.....	5,076	17,228
.....	.....	.....	.....
(26,678)	(25,985)	14,958	115,982
.....	.....	.....	.....
C)	.....	.....	.....
(26,678)	(25,985)	14,958	115,982

[fol. 244]

EXHIBIT 3

Aircraft & Diesel Equipment Corporation

Year Ended 30 November 1943

Reconciliation of Exhibit 2 with Contractor's Statements

		Before Renegotiation & Taxes	
		Renegotiable Business	Total Business
Per Exhibit 2	Sales	$3,519,825.02	$3,548,845.50
	Profits	1,525,988.43	1,538,900.95
Per Contractor	Sales	3,519,825.02	3,548,845.50
	Profits	1,381,731.83	1,393,470.36
Reconciliation of Sales			
"Renegotiable"		2,207,574.95(A)	
"Standard Commercial Articles"		1,312,250.07(A)	(C)
Per Contractor & Per Exhibit 2		3,519,825.02	3,548,845.50(A)
Reconciliation of Profits			
"Renegotiable"		858,477.62(A)	
"Standard Commercial Articles"		523,254.21(A)	(C)
Per Contractor		1,381,731.83	1,393,470.36(A)
Add: Amortization not claimed for tax purposes		517.56	517.56(B)
Add: Bad debts not claimed for tax purposes		16,745.15	16,881.89(B)
Per Income Tax Return			1,410,869.81
Add; Salaries disallowed		125,030.59	126,051.61
Transfer of loss on sale of capital assets to other deductions		1,963.30	1,979.33(A)
Basic Profit per Exhibit 2		1,525,988.43	1,538,900.75

(A) Per Exhibit D Attached to brief titled "Supplemental Renegotiation Data" signed by Mr. B. Ch. Kelleher, President, received by Service 15 June 1944.

(B) Per photostat of income tax return, Form 1120, for year ended 30 November 1943.

(C) Per audit report of Lybrand, Ross Brothers & Montgomery, dated 14 January 1944.

[fol. 245] EXHIBIT "C"

Copy

Filed Jun 15, 1945, Charles E. Stewart, Clerk,

9 June 1945

Aircraft & Diesel Equipment Corporation
4401 N. Ravenswood Avenue
Chicago, Illinois
Gentlemen:

In accordance with your request, there is transmitted herewith a statement showing, for your fiscal year ended 30 November 1943, the determination of excessive profits for said fiscal year and the facts and reasons upon which the determination was based.

For the Chairman:

(S.) George T. Wofford, Jr., Major, A.U.S. for William C. Martens, Lt. Colonel, A.U.S., Chief, Renegotiation Branch.

[fol. 246] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF B. CH. KELLEHER—Filed June 18, 1945

CITY OF WASHINGTON,
District of Columbia, ss.:

B. Ch. Kelleher, being first duly sworn, deposes and says:

That he is now, and has been since June 1, 1940, the President of Aircraft & Diesel Equipment Corporation; that he is authorized to make this affidavit for and on behalf of the corporation.

Affiant further states that the Diesel Equipment Corporation was incorporated November 30th, 1936 under the laws of the State of Delaware preparatory to acquiring all the assets of a New York company of the same name; that the incorporation and the acquisition of the assets of the New York company was prompted by the fact that the

[fol. 247] New York company had just prior thereto entered into a contract with the Allis-Chalmers Company wherein the latter agreed to purchase from the New York company its entire requirements of Diesel fuel injection equipment, and it was deemed advisable to provide additional funds to finance the anticipated expansion resulting from the Allis-Chalmers contract; that during the fiscal year, December 1, 1936 to November 30th, 1937 with the performance of that contract, the company's total sales were $509,252.43, upon which the company realized a profit of $133,210.22 before Federal taxes; or 28.165% of sales, and after taxes a profit of $115,982.13, or 22.775% of sales; that in the year 1937 Allis-Chalmers changed the design of its engine and discontinued the purchase of fuel ejectment equipment from the Diesel Equipment Company.

Affiant further states that during the years 1938 and 1939 the manufacture of Diesel equipment was necessarily reduced due to the loss of the Allis-Chalmers contract, and to the fact that the equipment previously manufactured for Allis-Chalmers was not readily adaptable for use by other purchasers of Diesel fuel injection equipment, and required changes and alterations in order that it might be offered for sale to users of Diesel fuel equipment generally; that during said period, 1938 and 1939, the company also deemed it necessary to re-tool, re-design and equip the shop for the [fol. 248] manufacture of aircraft precision parts, which prior to that time had been a relatively small portion of the company's business. That said years 1938 and 1939 were in fact years in which the company was preparing to take care of the volume of business subsequently realized.

Affiant further states that the years 1938 and 1939 cannot and should not be considered in any averaging of its normal earnings since said years do not represent normal activities, but represent that period of time when the company was redesigning, re-tooling and preparing itself for the commencement of its new business operations.

Affiant further states that during the years 1938 and 1939 this affiant and the present management of Aircraft and Diesel Equipment Corporation was not associated with the company; but this affiant is advised from customers of the company during said years that the products manufactured during that period of time were not equal in quality of the present products, and it was not until this

affiant and his associates took over the management of this company that its products, prices and deliveries were satisfactory to its customers.

Affiant further states that during the year 1940 the name of the corporation was changed to that of Aircraft and Diesel Equipment Corporation, and that the present management of the company, assuming control in June, 1940, changed personnel, facilities, machinery to the end that [fol. 249] more satisfactory products could be made and a greater sales volume secured, that during the year ended November 30th, 1941, the total sales of this company were $1,105,106.75 upon which this company realized a profit before taxes of $230,202.22, or 20.83% of its total sales; that after payment of Federal income taxes in the amount of $91,500, the company's operations resulted in a net profit of $138,702.22, or 12.551% of its sales; that for the year 1942 the total sales of Aircraft and Diesel were $2,706,477.33, leaving a profit before taxes of $931,366.64, or 34.413% of its sales, and that after payment of Federal income and excess profit taxes in the amount of $667,591.17, there remained a profit of $263,775.47, or 9.746% of its sales; that for the year 1943 Aircraft and Diesel's total sales were $3,548,845.50, and its profits before taxes was $1,393,470.36, or 39.28% of its sales, that after provision for Federal income and excess profit taxes in the amount of $991,340.37, or 27.93% of its sales, there remained a profit of $402,129.99, or 11.33% of its sales; that if the demand for renegotiation for the year 1942 is sustained, Aircraft and Diesel's profit before provision for Federal taxes is $156,366.64, or 5.778% of its sales, and after taxes, the profit is $59,775.47, or 2.20% of its sales; that for the year 1943, if the renegotiation demand is sustained Aircraft and Diesel's profit before taxes [fol. 250] is $128,470.36, or 3.62% of its sale; after taxes, its profit is $53,729.99 or 1.51% of its total sales.

Affiant further states that during the years 1942 and 1943 the plant was operated 16 to 24 hours per day, and its maximum facilities utilized for the production of materials necessary to the war effort; that the company had no Government loans and except for equipment loaned by its several customers, received no assistance other than certificates of necessity from the United States Government; that the company made available to all its customers its designs, manufacturing technique and know-how, and extended to

each of its customers an opportunity to acquire additional articles from others who might utilize such technique.

Affiant further states that during the years 1942 and 1943 a portion of the equipment manufactured by this company changed often and substantially as the type of engine or aircraft was changed; that during said years voluntary price reductions were made based upon actual experiences that the articles could be manufactured cheaper with a reasonable profit to the company; that the nature of the products manufactured by the company are most complex requiring in some instances a tolerance of 2/100000th of an inch, and involving the use of the highest grade of steel and the utilization of the services of the highest [fol. 251] skilled mechanics.

Affiant further states what he is familiar with the operation of precision shops of the kind and character of Aircraft and Diesel Equipment Corporation, and that a fair and reasonable profit before taxes to a company operating such shop is between 35 and 40 percent of its sales; in affiant's opinion Aircraft and Diesel Equipment Corporation did not realize excessive profits during the years 1942 and 1943; that the expansion of business of Aircraft and Diesel Equipment Corporation during the years 1941, 1942 and 1943 over the prior years of 1938, 1939 and 1940 was not due solely to war conditions, but to an improved product and more satisfactory prices and full and complete compliance with delivery schedules; that by 1940 the company had designed and manufactured a spped valve type pump, for which there was a substantial demand, and had the requirements for war products not accrued the company would have enjoyed substantial sales of said pumps, and would have realized substantial profits.

Affiant further states that Aircraft and Diesel Equipment Corporation has no outstanding bonds, has no encumbrances upon its real estate or equipment and that the fair and reasonable value of such real estate and equipment exceeds the sum of $300,000.00.

Affiant further states that he has read the affidavit of [fol. 252] Col. Maurice Hirsch to the effect that the Government proposes to direct one or two customers of Aircraft and Diesel Equipment Corporation to withhold for the account of the United States such monies as they shall be directed, not in excess of $275,000 to discharge the renegotiation demands for the year 1943. Affiant states that

there is no combination of two or three accounts of Aircraft and Diesel Equipment Corporation which will aggregate any amount comparable to $275,000; that the three largest accounts of the company as of June 16th would not exceed $120,000, and that if the War Contracts Price Adjustment Board or the Secretary as defined in the Renegotiation Act shall attempt the collection of $275,000 by direction to Aircraft and Diesel Equipment Corporation's customers, said War Contracts Adjustment Board will be required to give such directions to at least 16 or more customers of Aircraft and Diesel Equipment Corporation.

And further affiant sayeth not.

B. Ch. Kelleher.

Subscribed and sworn to before me this 18th day of June, 1945.

Christie H. Fesler, Notary Public.

[fol. 253-254] In United States District Court

[Title omitted]

Docket Entry

1945

June 18. Heard in U. S. C. of App. constitutionality of renegotiation act; reported by Mr. Middlemiss; to amend complt; 10 days allowed defts. to answer or request oral argument; plff. 5 days to reply; concluded; submitted. Justices: Miller, Proctor, Bailey.

[fol. 255] In United States District Court

[Title omitted]

Amended and Supplemental Complaint for Declaratory Judgment, Injunction and Other Relief Filed by Leave of Court—Filed July 2, 1945

[fol. 256] General Allegations Applicable to Sections 1 and 2 hereof.

1. Jurisdiction of this Court is invoked under the provisions of Section 41, 380(a) and 400 of Title 28 U. S. C. The matter in controversy herein exceeds, inclusive of in-

terest and costs, the sum or value of $3,000, and arises under the Constitution and laws of the United States of America. This suit is brought to obtain a decree under the Declaratory Judgment Act declaring:

(a) The Renegotiation Act to be unconstitutional, null and void.

(b) If the several sections of the Act be deemed separable, and not all unconstitutional, that Sections 403(c)(2) and 403(e)(1) be declared unconstitutional, null and void.

The suit also seeks injunctive relief restraining the defendants and each of them from further proceeding under the Renegotiation Act and particularly from further proceeding under Sections 403(c)(2) and 403(e)(1) in so far as said Act and said Sections provide for the taking of plaintiff's property without any form of judicial review.

In addition the suit seeks injunctive relief restraining the defendants and each of them from taking plaintiff's property under the provisions of the Renegotiation Act and Section 403(c)(2) and Section 403(e)(1) prior to a redetermination by The Tax Court of the United States of the determination of the War Contracts Price Adjustment Board (herein sometimes called the "Board").

In the alternative the suit seeks injunctive relief under the general equity powers of this Court restraining the defendants and each of them from taking the plaintiff's property under an order dated January 11, 1945 (Exhibit "A" attached hereto and made a part hereof) prior to a redetermination of the alleged excessive profits of the plaintiff in The Tax Court of the United States, for the reason that said "Order Under Delegated Authority Determining Excessive Profits", dated January 11, 1945, was entered by the Board illegally, arbitrarily, capriciously and without regard to the evidence then before it. The enforcement of the order of January 11, 1945, will cause plaintiff irreparable injury.

Plaintiff, Aircraft & Diesel Equipment Corporation, is a corporation organized and existing under the laws of the State of Delaware, licensed to do business in the State of Illinois, and having its principal office and place of business at 4401 North Ravenswood Avenue, Chicago, Illinois. Its manufacturing plant is located at Chicago, Illinois, where

it is engaged in the business of manufacturing and selling [fol. 257] diesel fuel injection equipment and precision parts and also aircraft precision parts. Defendant, Maurice Hirsch, is a citizen of the United States and is presently a resident of the District of Columbia. Defendants W. John Kenny, John R. Paul, H. C. Maull, Jr., Gladding B. Coit, and Carman G. Blough, each are citizens of the United States and each is presently a resident of or may be found in the District of Columbia and each is a member of and together the defendants above named in this paragraph constitute a purported agency of the United States of America created by the Renegotiation Act and called the "War Contracts Price Adjustment Board", and as such purport to be charged with the duty of administering:

A. Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942 (Public Law 528, 77th Congress) approved April 28, 1942, as amended by

B. Section 801 of the Revenue Act of 1942 (Public Law 753, 77th Congress) approved October 21, 1942, as further amended by

C. Section 1 of the Military Appropriation Act of 1944 (Public Law 108, 78th Congress) approved July 1, 1943, as further amended by

D. Public Law 149, 78th Congress approved July 14, 1943, and as further amended by

E. Section 701 of the Revenue Act of 1943 (Public Law 235, 78th Congress) effective February 25, 1944,

referred to herein as the Renegotiation Act, (50 U.S.C.A. Appendix 1191). (In this Complaint the Renegotiation Act enacted February 25, 1944 is distinguished from Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942 as amended prior to February 25, 1944 by referring to the first as the "Renegotiation Act" and to the latter as Section 403 of the "Sixth Supplemental National Defense Appropriation Act of 1942, as amended".) Defendant Henry L. Stimson is a citizen of the United States and of the State of New York and is presently an inhabitant of the District of Columbia. He is Secretary of War and is a "Secretary" within the meaning of the Renegotiation Act. Defendant Robert P. Patterson is a citizen of the United States of America and of the State of New York, and he is presently an inhabitant of the District of Columbia. He is Under Secretary of War, a purported delegate of the Board

and is sometimes a purported delegate of Henry L. Stimson, Secretary of War, as a Secretary within the meaning of "Secretaries", as defined in the Renegotiation Act.

2. The Plaintiff employs the accural method of bookkeeping and keeps its accounts and makes its federal income tax returns on the basis of a fiscal year ending November 30th in each year.

[fol. 258] Section I

3. During the fiscal year ended November 30, 1942, plaintiff's total sales of the aforesaid products were $2,706,477.33, of which sales amounting to $2,446,328.55 were alleged by defendant Patterson to be subject to renegotiation which, after deducting the costs of sales and other expenses of doing business, resulted in a net profit of $940,696.89. Plaintiff's income and excess profits taxes for said year amounted to $683,255.41, leaving a net profit, after such taxes, in the amount of $257,441.48. On October 27, 1943, following numerous conferences participated in by representatives of the plaintiff and representatives of the so-called Price Adjustment Board, (an administrative body created to administer the previous Act in respect of renegotiation, not the War Contracts Price Adjustment Board created by the Renegotiation Act), the defendant, Robert P. Patterson, made a unilateral determination, purporting to act under power vested in him by, or delegated to him pursuant to the Sixth Supplemental National Defense Appropriation Act of 1942 and the amendments thereto then made, by which he determined that plaintiff had realized excessive profits for the fiscal year ended November 30, 1942, in the amount of $775,000, and in which he demanded that said amount, less the tax credit authorized by law, be paid to the Treasurer of the United States, with interest at the rate of 6% per annum from and after October 27, 1943. Enclosed with said notice of unilateral determination was the formal "Determination of Excessive Profits" signed by the said Robert P. Patterson, providing, among other things, that the alleged excessive profits in the amount of $775,000.00 so found and determined to be due should be eliminated by any of the methods provided in the Sixth Supplemental National Defense Appropriation Act of 1942 and the amendments thereto, or by any combination thereof.

The unilateral determination so made by the defendant Patterson is attached hereto and made a part hereof and marked "Exhibit B". Following such determination by defendant Patterson, plaintiff demanded that it be advised of the basis upon which such determination had been reached, but defendants Patterson and Stimson and their representatives wholly failed, neglected and refused to give plaintiff such information or any other statement of the alleged facts or factors used by defendants Patterson and Stimson in the determination of plaintiff's alleged excessive profits for its fiscal year ending November 30, 1942. In the unilateral determination, the defendant Patterson stated that as a basis for the renegotiation of the plaintiff for its fiscal year ending November 30, 1942, he considered "certain financial, operating and other data obtained" by him [fol. 259] "from governmental and other reliable sources." But the plaintiff was afforded no opportunity to examine or rebut any of the said extraneous data so obtained and considered by the defendants Robert P. Patterson, Henry L. Stimson and their subordinates. Neither the so-called Price Adjustment Board nor defendants Patterson or Stimson made any findings of fact as a basis for said determination, or, if the same were made, they were never communicated to plaintiff, and plaintiff's request for a statement and basis of determination has been refused, as shown by "Exhibit C" attached hereto and made a part hereof.

4. On May 18, 1944, plaintiff filed in The Tax Court of the United States its Petition of Redetermination under the Renegotiation Act of alleged excessive profits, so asserted by defendants to have been realized by it during the fiscal year ended November 30, 1942, which said petition was entitled "Aircraft & Diesel Equipment Corporation, Petitioner, vs. Henry L. Stimson, Secretary of War of the United States, and Robert P. Patterson, Under Secretary of War of the United States, Respondents, Renegotiation Docket No. 9"; that by said petition, plaintiff sought a determination regarding the constitutionality of said Renegotiation Act and a redetermination of the said determination of excessive profits so made by the defendant, Robert P. Patterson, intending thereby to submit its case to The Tax Court of the United States for an orderly and just determination of its liability, if any. In the event such Rene-

gotiation Act be declared constitutional, plaintiff purposes to and will make such refund to the Treasury of the United States as is ultimately determined to be due. However, well knowing that the plaintiff intended to file its petition in The Tax Court of the United States, Robert P. Patterson, defendant herein, on or about the 29th day of April, 1944, arbitrarily, unlawfully and without right, directed contractors, plaintiff's customers (other than the United States of America or any department, agency, or instrumentality thereof) to whom it had sold its products, to withhold for the account of the United States money due plaintiff as subcontractor, in amounts aggregating $204,000. Thereafter, on or about the 19th day of July, 1944, while the petition filed May 18th, 1944, for redetermination of alleged excessive profits for its fiscal year ending November 30, 1942, was still pending and undetermined before The Tax Court of the United States, the said Robert P. Patterson, purporting to act pursuant to the Renegotiation Act, arbitrarily, unlawfully and without any right whatsoever, directed contractors, plaintiff's customers, and persons, firms and corporations (other than the United States of America or [fol. 260] any department, agency or instrumentality thereof) who were indebted to petitioner for its products sold by petitioner, to pay into the Treasury of the United States the sum of $204,000.00, and such contractors, customers of the plaintiff so indebted to petitioner made such payments in order to avoid penalties threatened to be imposed by the said Patterson; that as a result of such arbitrary and unlawful action on the part of Patterson, defendant, the plaintiff was deprived of the sum of $204,000.00, thereby impairing the working capital of the plaintiff and making it more difficult for the plaintiff to continue its manufacturing operations which are essential to the war effort.

5. During the fiscal year ended November 30, 1943, plaintiff's total sales, less returns and allowances, amounted to $3,548,845.50 and the cost of said sales, labor material and other business expenses amounted to $2,155,375.14, leaving a net profit before Federal taxes of $1,393,470.36. Plaintiff's income and excess profits taxes for said year amounted to $991,340.37, leaving a net income after provision for said taxes, in the amount of $402,129.99.

Plaintiff alleges that in the original Complaint filed herein, plaintiff inadvertently but erroneously alleged in Paragraph (5) of its complaint that:

> "And during such fiscal year the plaintiff had no contracts with the United States of America, nor did it do any work under any contract which it had with the United States of America."

Plaintiff now alleges that on May 21, 1941, it made and entered into a contract with the United States Navy Department, in and by which plaintiff agreed to furnish certain pumps to the United States Navy, and that on March 17, 1942, pursuant to the request of the United States Navy, it entered into an agreement supplemental to said contract of May 21, 1941, by which plaintiff agreed to furnish certain pumps and fuel injector equipment to the United States Navy; that during the fiscal year ended November 30, 1943, it furnished to the Navy Department pumps and injectors as had not been previously furnished on the supplemental contract of March 17, 1942, and that the sales price of such articles so delivered in the fiscal year ended November 30, 1943 amounted in the aggregate to $174,165.00 as is more fully shown by the affidavit of B. Ch. Kelleher attached hereto and made a part hereof in respect to Navy sales.

Plaintiff further alleges that such pumps and injector equipment as were delivered by plaintiff to the United States Navy in the fiscal year ended November 30, 1943, were all paid for by the United States of America on or prior to the 27th day of August, 1943.

6. On or about December 10, 1944, a representative of [fol. 261] the Chicago Office of the War Contracts Price Adjustment Board advised plaintiff orally that it had determined that plaintiff had realized excessive profits of $1,265,000.00 in the fiscal year ended November 30, 1943, upon its total sales, and that in computing the profits which plaintiff should be permitted to retain after renegotiation, the total sales should be reduced by the sum of $1,265,000.00, leaving what its representative called "net adjusted sales" for said year, in the amount of $2,283,845.50. Said representative then requested plaintiff herein to acquiesce in such determination and to enter into an agreement with the War Contracts Price Adjustment Board for the elimination of such alleged excessive profits in the sum of $1,265,000.00

less appropriate tax adjustments for taxes paid by plaintiff. Plaintiff declined and refused to acquiesce in such determination or to enter into the agreement so suggested, and the representative of the Chicago Office of the War Contracts Price Adjustment Board then advised plaintiff that the entire matter was closed so far as the Chicago Office was concerned and that all data, statements and reports of the plaintiff would be forwarded immediately to the War Contracts Price Adjustment Board, Washington, D. C., for such action as the Board might desire to take. At no time during said proceedings had or taken in Chicago by the Chicago Office of the Board, did the Board, the Chicago Office of the Board, or any of its representatives furnish the plaintiff herein with any written report of its determination, the basis therefor, or the facts or factors considered.

7. In December, 1944, and on January 9, 1945, plaintiff's representatives attended conferences in the office of the War Contracts Price Adjustment Board in Washington, D. C., at which conferences representatives of the defendant, Robert P. Patterson as delegate of the Board, were present. At each of said times, plaintiff protested the aforesaid proposed determination that plaintiff had realized $1,265,000.00 excessive profits from its sales alleged to be subject to renegotiation in the fiscal year 1943, and contended, as it had repeatedly done theretofore, that any such determination would be grossly improper, unlawful and unwarranted on the grounds and for the reasons hereinafter set forth in paragraphs 17 and 22 of this complaint. At said times, plaintiff also requested that there be disclosed to plaintiff the facts, factors and reasons as well as the basis underlying said proposed determination and what data and information if any had been considered by the representatives and delegates of the War Contracts Price Adjustment Board in the proposed determination and how such facts, factors, reasons and basis had been applied in the determination of the excessive profits, of the plaintiff for the fiscal year ended November 30, 1943. Except for a confirmation of the [fol. 262] disclosure theretofore made by the Chicago Office concerning the disallowance of officers' salaries in the amount of $125,000.00, of $20,000.00 additional disallowed costs as alleged in paragraph 21 hereof, and the inclusion of sales of Standard Commercial Articles in the base for its determination, the said conferees, representing the Board

or its delegate, the defendant Robert P. Patterson, failed, neglected and refused to disclose (a) the basis, if any, upon which they proposed to determine that plaintiff realized $1,265,000.00 excessive profits, (b) the facts or factors, if any, which were considered in reaching said conclusion, or (c) the information considered in determining the matter.

8. On or about January 11, 1945, plaintiff was notified of the entry and issuance of an order by the said Robert P. Patterson purporting to act under the Renegotiation Act as a delegate of the War Contracts Price Adjustment Board, by which it was determined by the said Patterson that plaintiff had realized excessive profits for the fiscal year ended November 30, 1943, in the amount of $1,265,000.00, and by which plaintiff was directed to pay said sum, less applicable taxes previously paid, to the Treasurer of the United States. A true and correct copy of the letter of notification is attached hereto and made a part hereof as Exhibit "D". With the letter of notification was enclosed the formal "Order Under Delegated Authority Determining Excessive Profits", (Exhibit "A").

9. On February 28, 1945, the plaintiff filed in accordance with the provisions of Section 403(d)(5) of the Renegotiation Act, with the War Contracts Price Adjustment Board, its request to said Board to initiate a review of the purported determination made by the said Robert P. Patterson, as delegate of the War Contracts Price Adjustment Board (Exhibit "A"). The receipt of this request to initiate such review was acknowledged by the Board on March 3, 1945. Each of these dates, namely February 28, 1945 and March 3, 1945, were within sixty days from January 11, 1945, the date of the "Order Under Delegated Authority Determining Excessive Profits" issued by Robert P. Patterson, as delegate of the Board.

10. On May 3, 1945, the Board entered an order declining and refusing to initiate a review of the determination made by its delegate, Robert P. Patterson, in respect of excessive profits of the plaintiff for its fiscal year ended November 30, 1943; a copy of such order is attached hereto marked "Exhibit E". The order of the Board entered January 11, 1945, (Exhibit "A") thereby became and was the order of the Board as of the date (May 3, 1945) the Board declined and refused to review such order (Exhibit

"A"). Under the provisions of Section 403(c)(2) of the [fol. 263] Renegotiation Act, the Board may direct the defendant, Henry L. Stimson, as a Secretary (as Secretaries are defined in the Renegotiation Act) to direct contractors or subcontractors for whom the plaintiff had done work under contracts or pursuant to sales orders, to withhold such amounts of money due to the plaintiff as will aggregate $1,265,000.00, less applicable tax adjustments.

11. In the said order of January 11, 1945, (Exhibit "A") defendant, Robert P. Patterson, acting as a delegate of the War Contracts Price Adjustment Board, stated that as a basis for the renegotiation of the plaintiff for its fiscal year ended November 30, 1945, he gave due consideration to certain financial, operating and other data obtained by him from governmental and other reliable sources, and to all the factors referred to in sub-section (a)(4)(A) of the Renegotiation Act. The plaintiff has been afforded no opportunity to examine or rebut any of the said extraneous data considered by the defendant Robert P. Patterson, acting as a delegate of the War Contracts Price Adjustment Board, by the Board, or by its or his delegates or subordinates, or to examine or cross-examine the source of "certain financial, operating or other data relating to" plaintiff's business, which was "obtained from governmental and other reliable sources" and which was considered by the delegates of the War Contracts Price Adjustment Board and the Board in making the determination embodied in its order (Exhibit "A") and its determination not to initiate a review of such determination. Nor was the plaintiff afforded any opportunity to present any arguments or contentions based upon such financial, operating or other data obtained from "governmental or other reliable sources." Further, there are no findings of fact made by the Board or embodied in the order or any of the proceedings precedent to the issuance of the order upon which the contentions and arguments of the plaintiff might be based.

12. Plaintiff was afforded an opportunity to be heard, but was denied the right to examine some of the matters and things which the Board deemed pertinent to and considered in determining excessive profits, and accordingly it could not know all the matters and things about which it might present arguments and contentions.

On April 6, 1945, Plaintiff requested the War Contracts Price Adjustment Board to furnish it with the statement which the Board is required to furnish to the Plaintiff under the provision of Section 403(c)(1) of the Renegotiation Act, setting forth the determination made and the facts used as a basis thereof and the reasons for such determination. The War Contracts Price Adjustment Board failed and refused to forward such statement until after the original complaint in this cause had been filed, and there-[fol. 264] after on or about June 9, 1945, the War Contracts Price Adjustment Board mailed to Plaintiff a statement dated June 8, 1945, purported to be in compliance with said Section 403(c)(1). Said statement of the basis of such determination is now before this Court in the form of an affidavit made by George T. Wofford, Major, filed on the 16th day of June 1945 and such statement so mailed to Plaintiff and as shown by the affidavit of George T. Wofford is the only information that Plaintiff has in respect of the War Contracts Price Adjustment Board's determination. If the defendants do as they propose to do and as is stated in the affidavit of Maurice Hirsch filed in this cause and as it is alleged in paragraph 43 of this complaint the defendants will do, such statement is of no benefit to the Plaintiff.

13. On April 4, 1945, the plaintiff filed, pursuant to right granted by Section 403(e)(1) of the Renegotiation Act, its petition in The Tax Court of the United States to redetermine its excessive profits, if any, realized during its fiscal year ended November 30, 1943. The United States filed a motion to strike this petition on the ground that it was filed during the time when the War Contracts Price Adjustment Board might initiate a review. This motion was heard before The Tax Court on May 16, and in the event that The Tax Court shall dismiss said petition filed April 4, 1945, the plaintiff herein will file another petition in The Tax Court of the United States for redetermination of such excessive profits, a copy of which petition is attached hereto, marked "Exhibit F". In and by said petition filed April 4, 1945, or said new petition, if one be filed (Exhibit "F"), the plaintiff seeks a determination regarding the constitutionality of the Renegotiation Act, and the lawfulness and propriety of the determination of the alleged excessive profits as made by the said Robert P. Patterson, acting as

a delegate of and for the War Contracts Price Adjustment Board, intending thereby to submit its case for an orderly and just determination of its liability, if any, and in the event said Act is held constitutional, to make payment to the Treasury of the United States, in such amount, if any, as may be ultimately determined to be due.

14. Plaintiff refused and still refuses, for the reasons set forth herein, to acquiesce in the determination of the War Contracts Price Adjustment Board, that during the fiscal year ended November 30, 1943, it realized excessive profits of $1,265,000.00 on its sales alleged to be subject to renegotiation, and plaintiff refused and still refuses to eliminate said sum of $1,265,000.00 as proposed and demanded by the said War Contracts Price Adjustment Board, acting through and by Robert P. Patterson, its delegate, and plaintiff desires, as is alleged in paragraph 13 hereof, to have an [fol. 265] orderly and just determination made of its liability, if any, in The Tax Court of the United States upon its petition heretofore filed to determine such liability, if any, unless the Renegotiation Act shall have been declared unconstitutional.

15. Notwithstanding the fact that the plaintiff has filed its petition for redetermination in The Tax Court of the United States whereby it seeks an orderly determination of the amount, if any, it may owe to the United States of America, as excessive profits for its fiscal year ending November 30, 1943, the War Contracts Price Adjustment Board, purporting to act under the provisions of Section 403(c)(2) of the Renegotiation Act, purposes to direct the defendant Henry L. Stimson, Secretary of War, or his delegates, to direct contractors, customers of the plaintiff, to withhold moneys due to the plaintiff by such contractors for the account of the United States, in amounts determined by it, the War Contracts Price Adjustment Board, to be due as excessive profits, and Henry L. Stimson, Secretary of War, or his delegates purposes to follow such directions of the War Contracts Price Adjustment Board and further to direct such contractors to pay such sums of money into the Treasury of the United States, in accordance with the procedure adopted by Henry L. Stimson, Secretary of War, acting through his delegate, Robert P. Patterson, in respect of excessive profits found by him to be due for the fiscal year of the plaintiff ending November 30, 1942, as hereto-

fore, recited in this complaint, before The Tax Court of the United States of America shall have made or shall have had opportunity to make any determination of this plaintiff's petition for a redetermination of its excessive profits, if any, for its fiscal year ending 1943. In the event of such a seizure of such amounts due to the plaintiff or the payment thereof by customers of the plaintiff to the Treasury, the amounts so seized or paid would be transferred to the surplus fund of the United States Treasury, as is provided by said Renegotiation Act.

16. There was, as of May 1, 1945, due plaintiff from its customers (they being firms, individuals and corporations, other than the United States of America, or any department, agency or instrumentality thereof) approximately $274,000.00, and on that date plaintiff had on its books unfilled orders from such customers and others (not the United States of America or any department, agency or instrumentality thereof), calling for the manufacture and sale of its products at prices approximately aggregating $890,000.00. The said sums now due, or such portion thereof as the War Contracts Price Adjustment Board has determined should be withheld and paid into the Treasury, and other sums which may become due in the future, Henry L. Stimson or his delegates will, as his delegate Robert P. [fol. 266] Patterson did in a prior year, direct to be withheld from the plaintiff and paid into the Treasury of the United States. Plaintiff avers that, after adjustment for Federal income and excess profits taxes, the amount involved in the order and decision of War Contracts Price Adjustment Board does not and can not exceed $275,000.00, but defendant Henry L. Stimson, acting at the threatened direction of the War Contracts Price Adjustment Board nevertheless threatens to, and will, unless enjoined and restrained, order the withholding from the plaintiff and the payment by plaintiff's customers of said sums of money into the Treasury of the United States.

17. Plaintiff alleges that said Renegotiation Act, in so far as it purports to subject plaintiff to renegotiation and requires it to pay any sum whatsoever to the United States on account of its business in the fiscal year ended November 30, 1943, is in violation of the rights guaranteed to it by the Constitution of the United States of America, and is void

and without legal effect for the following and other reasons:

(1) The Renegotiation Act violates the provisions of Amendment V of the Constitution of the United States in that it deprives petitioner of its property without due process of law.

(2) The Renegotiation Act violates the provisions of Amendment V of the Constitution of the United States in that it provides for the taking of plaintiff's property without just compensation.

(3) The Renegotiation Act violates the provisions of Amendment X of the Constitution of the United States in that it provides for the exercise of power not granted to the United States.

(4) The Renegotiation Act violates Article I, Section 1, of the Constitution of the United States in that it unlawfully delegates legislative power.

(5) The Renegotiation Act violates Amendment VII of the Constitution of the United States in that it deprives the defendant of a jury trial in a controversy cognizable at common law, the value of which exceeds $20.

(6) The Renogotiation Act as applied to the petitioner is vague, uncertain and indefinite, in that it does not contain:

(a) Any objective standard, measurement or rule for the determination of excessive profits;

(b) Any description of or restriction upon the data, facts, factors or information to be considered in the determination of such alleged excessive profits.

(c) In that it does not make any provision for a hearing; and, in that the factors or standards appearing in Section 403(a)(4)(A) of the Renegotiation Act, or elsewhere in said Act, are indefinite, subjective, vague, and uncertain.

and in each of these respects the Renegotiation Act [fol. 267] is in violation of Article I, Section 1 and of Amendments V and X of the Constitution of the United States.

(7) Said Renegotiation Act provides for no judicial review of a determination made by the War Contracts

Price Adjustment Board or any individual acting for said Board, and, as such, violates Amendment V of the Constitution of the United States, in that The Tax Court of the United States is not a judicial body, but is a part of the executive branch of the Government.

(8) In so far as Sections 403(c)(2) and 403(e)(1) of the Renegotiation Act purport to authorize the Board to direct secretaries to eliminate excessive profits by directing contractors and subcontractors to withhold money due to the plaintiff and to authorize secretaries to direct contractors and subcontractors to withhold moneys due to the plaintiff for the account of the United States before The Tax Court of the United States has had an opportunity to make and has made a redetermination of such excessive profits upon the filing of an appropriate petition pursuant to Section 403(e)(1) of the Renegotiation Act, Section 403(c)(2) and 403(e)(1) of the Renegotiation Act are in violation of Amendment V of the Constitution of the United States.

(9) The Renegotiation Act violates Article III, Section 1 and Section 2 of the Constitution of the United States in that it authorizes the Executive branch of the Government of the United States to determine a controversy to which the United States is a party.

Section II

18. Continuously, since early in the year 1940 plaintiff has received numerous contracts and purchase orders for diesel fuel injection equipment, precision parts and aircraft precision parts from individuals, firms and corporations desiring such equipment or parts for their own account, or from persons, firms and corporations who in turn held contracts with others for the furnishing of such material. In carrying out its aforesaid contracts and filling said orders, plaintiff had maintained a high degree of adherence to its delivery schedules, and has delivered products of high precision and quality. Plaintiff is only one of numerous manufacturers of precision parts for aircraft and diesel fuel injection equipment and precision parts, and its contracts and orders have all been obtained on bids submitted in competition with other firms and corporations engaged

in the same business. Plaintiff is informed and believes, and therefore avers that its selling prices were among the lowest in the industry. Aside from certain Certificates of Necessity authorizing sixty months' amortization of certain of plaintiff's facilities, plaintiff's reductions of cost and consequent reductions in selling prices have been accomplished without financial aid or assistance from the United States of America.

[fol. 268] 19. In carrying out its contracts and filling the aforesaid orders since the early part of the year 1940, plaintiff has, at all times to the date hereof, cooperated with the United States with respect to making information available to other suppliers of similar products as to its manufacturing techniques and methods, in increasing its facilities at its own cost upon the request of the Navy Department, and in making numerous voluntary and substantial price reductions, permitted to be made as a result of improved manufacturing technique and operating experience. Plaintiff has no "cost-plus" contracts and assumed all the risks of its pricing policies. Plaintiff is informed and believes, and therefore avers that by comparison with others who manufactured the same precision parts for plaintiff's customer, plaintiff's prices were lower, its percentage of rejections was smaller and its performance of delivery schedules was most satisfactory to said customers; that plaintiff's low cost of manufacture was due to continuous and careful administrative supervision and planning, shop efficiency, prewar engineering and planning, and continuous, uninterrupted operations.

20. During the latter part of February, 1944, the Chicago Office of the War Contracts Price Adjustment Board began proceedings under the purported authority of the Renegotiation Act to renegotiate plaintiff's profits upon contracts and purchase orders with individuals, firms and corporations purchasing plaintiff's products, during the fiscal year ended November 30, 1943. In such proceeding, said Chicago Office purported to act for the War Contracts Price Adjustment Board. From time to time thereafter, in conference and by mail, plaintiff supplied details and statistical data with reference to its operations in said fiscal year. In the submission to such data and information plaintiff asserted and still asserts that of its total sales of $3,548,-

845.50, only $2,207,574.95, in any event, were subject to renegotiation; that $1,312,250.07 of its total sales were of "Standard Commercial Articles" as defined in the Renegotiation Act; were articles sold under competitive conditions affecting the sale thereof in a manner which reasonably protected the Government against excessive prices, and, as such, were not subject to renegotiation; that $29,020.48 of its total sales were not sold for the ultimate use of the United States of America or any department, agency or instrumentality thereof, but were made and sold for civilian use, and, as such, were not subject to renegotiation. Plaintiff filed with the Board a Petition for Certificate of Exemption for Standard Commercial Articles and furnished the Chicago Office of the Board a copy thereof. It advised the Chicago Office of the Board that said sales referred to in said petition were of the character referred to and ex-[fol. 269] empted by Section 403(a)(7) and 403(i)(4)(D) of the Renegotiation Act; and that these sales were of articles which have been sold by the plaintiff for years in a competitive market at fixed prices, which prices were the prices at which the plaintiff had sold such articles during its fiscal year 1943. After a purported consideration of the information and data submitted by the plaintiff in and in connection with its Petition for "Certificate of Exemption of Standard Commercial Articles", as filed by plaintiff with the Board, the Board declined and refused to issue a Certificate of Exemption on the sales of "Standard Commercial Articles" as requested by the plaintiff, notwithstanding the fact that the sales were made under conditions and in a manner that would fully protect the United States against excessive prices, according to the commonly accepted and honored definition or connotation of the term "excessive prices", (if that term is susceptible of definition). Notwithstanding all these facts as related above, the Board, arbitrarily, capriciously and unlawfully denied plaintiff's "Petition for Exemption of Standard Commercial Articles" and arbitrarily, capriciously and unlawfully determined that all sales of the plaintiff were subject to renegotiation, including sales of "Standard Commercial Articles" as defined in the Renegotiation Act. Plaintiff was also informed by representatives of the Chicago Office of the Board that it had disallowed, as part of the plaintiff's costs on renegotiable sales, the sum of $145,000, representing a part of the compensation paid plaintiff's officers in

the sum of $125,000 (which compensation so paid was paid under contracts which were executed prior to the enactment of the Sixth Supplemental National Defense Appropriation Act of 1942, and which, in so far as plaintiff's fiscal year 1943 is concerned, were performed both by the plaintiff and its officers prior to the enactment of the Renegotiation Act); and the sum of $17,000 as bad debts, $1,000 of an amortization charge and $2,000 charged as a loss on the sale of capital assets. The determination of the Chicago Office and of the Board in rejecting these items of costs as aforesaid and the inclusion in its base for the determination of excessive profits, the item of $1,312,250.07, representing sales of Standard Commercial Articles was protested by the plaintiff to the Chicago Office of the Board and to the Board, but notwithstanding such protest, the plaintiff is informed and believes such items were considered by the Board in the same manner as they were considered by the Chicago Office of the Board. In the fiscal year ending November 30, 1943, plaintiff used the same pricing methods which it has used since 1940 and has adhered to all the rules, regulations and methods of establishing prices prescribed by the Office of Price Administration and of all applicable laws of the United States of America.

[fol. 270] 21. Plaintiff further alleges that even if said Renegotiation Act or any part thereof be declared to be a proper exercise of the powers granted Congress by the Constitution, and to be constitutional in other respects, the acts and doings of the defendants in the application of said Act to the plaintiff's business for the year ending November 30, 1943, are illegal, arbitrary and capricious in each of the following respects:

(A) In the determination of alleged excessive profits realized, the defendants have erroneously and illegally included as subject to renegotiation, sales of "Standard Commercial Articles" as defined by Sections (a)(7)(A, B, C) and 403(c)(4)(D) made by petitioner in the aggregate amount of $1,312,250.07.

(B) In the determination of alleged excessive profits realized, there has been eliminated from the plaintiff's cost of sales, the sum of $145,000.00 as alleged in paragraph 21 hereof, all of which said items were proper items of plaintiff's costs.

(C) In the determination of alleged excessive profits realized, no proper credit or consideration has been given to the following factors:

(1) Efficiency of the petitioner with particular regard to attainment of quantity and quality production, reduction of costs, and economy in the use of materials, facilities and manpower;

(2) Reasonableness of petitioners' costs and profits, with particular regard to volume of production, normal prewar earnings, and comparison of war and peacetime products;

(3) Amount and source of public and private capital employed by petitioner and its net worth;

(4) Extent of risk assumed by petitioner, including the risk incident to reasonable pricing policies;

(5) Nature and extent of petitioner's contribution to the war effort, including inventive and developmental contribution and cooperation with the Government and other contractors in supplying technical assistance;

(6) Character of petitioner's business, including complexity of manufacturing technique, character and extent of subcontracting, and rate of turnover.

(D) In the determination of alleged excessive profits, plaintiff believes the War Contracts Price Adjustment Board took into consideration plaintiff's operation for the years 1938 and 1939, notwithstanding plaintiff in those years made no profits but was engaged in experimentation and development which, to a large measure, contributed to its ability to perform profitable work and which has greatly contributed to the war effort; that the defendants through their duly authorized subordinates were advised of these perti- [fol. 271] nent facts and ignored them in making their determination of the so-called excessive profits alleged by them to have been made by plaintiff for the fiscal year ending November 30, 1943.

(E) In the determination of the alleged excessive profits, petitioner's earnings have been reduced below its normal pre-war earnings as is shown by the schedule marked "Exhibit G" attached to this complaint and by this reference made a part of it.

(F) In determining alleged excessive profits no proper consideration was given to the facts made known to the War Contracts Price Adjustment Board, through its designated or delegated representatives, that prior to the year 1937, plaintiff did very little production work except for one customer and that in the year 1937 it lost that customer, and was, thereby, relegated to experimental and developmental work in the field of fuel injection devices for the betterment of diesel equipment; that, accordingly, its profits during the years 1938 and 1939, generally used by the War Contracts Price Adjustment Board, through its designated or delegated representatives as a base for comparison of pre-war profits with profits during the years renegotiated is not representative of its normal profits and when so used as a guide reflects unfavorably and unfairly to the plaintiff in the determination of its alleged excessive profits.

(G) In the determination of alleged excessive profits, no proper consideration was given to plaintiff's claim for relief under Section 722 of the Internal Revenue Code, and plaintiff alleges that the fiscal years 1938 and 1939 and the early part of 1940, through no fault of its own and due to extraordinary and unusual conditions (the loss of its single customer due to a change in customer's machines) was forced to convert its business into other lines and sustained substantial operating losses which reduced substantially its average income for said base years. Plaintiff avers that it heretofore filed and now has pending before the Commissioner of Internal Revenue a petition for relief under Section 722 of the Internal Revenue Code which it is believed by plaintiff will result in the reconstruction and substantial increase in plaintiff's average earnings credit for purposes of the Federal Excess Profit Tax; that if the defendant Henry L. Stimson or his delegates, acting at the direction of the War Contracts Price Adjustment Board, proceeds to eliminate the alleged excessive profits of $1,265,000.00 for the year ended November 30, 1943, by directing plaintiff's contractors to withhold sums due plaintiff, and to pay the same into the Treasury of the United States, as he or they propose and threaten to do, such action will operate in practical effect to set off and to nullify to a

large degree the remedy afforded plaintiff by Section 722 of the Internal Revenue Code, as well as the remedy provided by said Renegotiation Act whereby plaintiff may petition The Tax Court of the United States for [fol. 272] a redetermination of the amount, if any, by which its profits were excessive for the fiscal year 1943.

In the determination of alleged excessive profits realized by Plaintiff during the fiscal year ended November 30, 1943, which determination purports to be made under the Renegotiation Act passed February 25, 1944, the War Contracts Price Adjustment Board included all sales made by Plaintiff during the fiscal year ended November 30, 1943 and included therein not only the profits derived from contracts made by Plaintiff with its customers prior to the enactment of the Renegotiation Act, dated February 25, 1944, but also included therein profits derived from contracts made by Plaintiff with its customers prior to April 28, 1942, the date of the enactment of the Sixth Supplemental National Defense Appropriation Act of 1942.

Allegations Applicable to Both Sections I and II.

22. Plaintiff alleges that during the fiscal year ended November 30, 1943, of its total shipments in the amount of $3,548,845.50, over 80% of the dollar value of its shipments were made to Fairchild Engine and Airplane Corporation (Ranger Division), referred to as "Ranger", General Motors Corporation (Buick Motors Division, Chevrolet Division and Allison Division), Woodward Governor Company, and the United States Navy; that the shipments to said purchasers during the fiscal year ended November 30, 1943 were upon contracts made between the plaintiff and said purchasers prior to April 28, 1942, the date of the enactment of the Sixth Supplemental National Defense Appropriation Act of 1942, as is more fully shown by the affidavits of B. Ch. Kelleher which are filed herewith and made a part hereof.

23. Plaintiff alleges that said contracts and the shipments made thereunder described in the foregoing Paragraph (22) are not subject to the provisions of Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942, enacted April 28, 1942, relating to renegotiation, nor to the Renegotiation Act enacted February 25,

1944; that the aggregate of the shipments made by plaintiff in the fiscal year ended November 30, 1943 to the purchasers named in Paragraph (22) aforesaid under contracts made prior to April 28, 1942, between the plaintiff and said purchasers, was $2,780,009.82; and that said shipments are not subject to renegotiation under the provisions of Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942 or the Renegotiation Act.

24. Plaintiff further alleges that Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942 and the amendments thereto made during the year 1942, neither subjected nor purported to subject the contracts [fol. 273] described in Paragraph (22) above or the shipments of $2,780,009.82 made thereon, described in Paragraph (23) above, to renegotiation, and if said Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942 and the amendments thereto subjected or purported to subject said contracts and shipments described in Paragraph (22) to renegotiation, said Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942 and the amendments thereto so construed, as applied to plaintiff in regard to said shipments, would be unconstitutional and void and repugnant to the provisions of Amendment V of the Constitution of the United States.

25. Plaintiff further alleges that the Renegotiation Act enacted February 25, 1944 did not subject or purport to subject the contracts or shipments described in Paragraph (22) above to renegotiation, and said Renegotiation Act, enacted February 25, 1944, if construed as subjecting said contracts and shipments described in Paragraph (22) aforesaid to renegotiation, would be unconstitutional and void and repugnant to the provisions of Amendment V of the Constitution of the United States.

26. Plaintiff further alleges that in the performance of its said contracts with the purchasers named in Paragraph (22) hereof, it received from time to time, both prior and subsequent to April 28, 1942, shipping instructions in the form of "purchase orders" and shipping schedules in such form as was used by the respective purchasers aforesaid, designating their immediate requirements; that of the total shipments made by plaintiff during the fiscal year ended November 30, 1943, $175,423.71 of said shipments were

made upon such shipping instructions or so-called purchase orders received by plaintiff prior to April 28, 1942, and $2,604,586.11 of such shipments were made upon such shipping instructions or so-called purchase orders received by plaintiff after April 28, 1942.

27. Plaintiff further alleges that all of said shipments in the sum of $175,423.71, made upon "purchase orders" received by the plaintiff prior to April 28, 1942, are not subject to renegotiation under the provisions of Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942, and said Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942, if construed as subjecting said sales in the amount of $175,423.71 as described in Paragraph (26) hereof to renegotiation, would be unconstitutional and void, and repugnant to the provisions of Amendment V of the Constitution of the United States.

28. Plaintiff further alleges that said Renegotiation Act enacted February 25, 1944, neither subjected nor purported [fol. 274] to subject the shipments made on purchase orders dated prior to April 28, 1942, described in Paragraph (26) above, to renegotiation; and said Renegotiation Act enacted February 25, 1944, if construed as subjecting said shipments made on purchase orders dated prior to April 28, 1942, described in Paragraph (26) above, to renegotiation under the Renegotiation Act, would be unconstitutional and void and repugnant to the provisions of Amendment V of the Constitution of the United States.

29. Plaintiff further alleges that during the year 1942 the several divisions of General Motors Corporation forwarded to plaintiff agreements regarding renegotiation, pursuant to and in accordance with the provisions of Section 403 of the Sixth Supplemental Defense Appropriation Act of 1942, as amended, as is more fully set forth in the affidavits of B. Ch. Kelleher filed herein and by reference made a part hereof. Plaintiff also alleges that thereafter plaintiff executed said agreements with Allison Division, Chevrolet Division and Buick Division, and that the true intent and purpose of said agreements and each of them is that the plaintiff will be subject to renegotiation only if said Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942 should be determined to be constitutional

and valid, and then only if said Section 403 be applicable to the contracts of the plaintiff made subsequent to its enactment, and not to contracts made prior thereto. Plaintiff further alleges that Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942 is unconstitutional and invalid by reason of repugnancy to Article I and Article III of the Constitution of the United States and the Amendments V, VII and X thereto, for the reasons assigned in this complaint in respect of the unconstitutionality of the Renegotiation Act. Plaintiff further alleges that each of said agreements aforesaid was made and entered into by the plaintiff without any consideration, in so far as it be construed as applicable to contracts made and entered into prior to the date thereof, and that each of said agreements is, so construed, of no force and effect. Plaintiff alleges that no proceedings have been taken to renegotiate under any contract or contracts with any individual purchaser in accordance with the terms and provisions of said agreements, and that said agreements did not authorize or purport to authorize renegotiation under the Renegotiation Act, nor were any proceedings taken to renegotiate any of the profits derived by the plaintiff in its fiscal year ended November 30, 1943, under the terms and provisions of Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942 as amended.

[fol. 275] 30. Plaintiff further alleges that except as set forth in Paragraph (29) above, and except as a provision for adjustment of prices or renegotiation of profits appears in its said supplemental contract with the United States Navy, plaintiff made no agreements for renegotiation of its prices or profits on contracts or shipments made in the year 1943, and consented to no change, modification or alteration of its contracts; that no renegotiation of its profits or prices under the Navy contract, as such, has been had.

31. Plaintiff further alleges that it made and entered into no agreement with purchasers of its products, that its said contracts or shipments made in the fiscal year ended November 30, 1943 would be subject to renegotiation pursuant to the terms and provisions of the Renegotiation Act enacted February 25, 1944.

32. Plaintiff further alleges that the enactment of Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942, whether or not said Act be con-

stitutional or unconstitutional, could not subject plaintiff's contracts and shipments made in the year 1943 to the provisions of the Renegotiation Act enacted February 25, 1944.

33. Plaintiff further alleges that in respect of work performed for Ranger in plaintiff's fiscal year ended November 30, 1942, not less than $93,000 was sold upon orders or shipping instructions showing the same to be a part of Lend-Lease, and that in the fiscal year of the plaintiff ended November 30, 1943, not less than $210,000 was sold upon orders or shipping instructions showing the same to be a part of the Lend-Lease program. Plaintiff believes that of the products of plaintiff so shipped to Ranger, none were shipped pursuant to any contract with any Department of the United States of America, as defined in Section 403 of the Sixth Supplemental National Defense Appropriation Act. Plaintiff also believes that much of the other products manufactured by plaintiff as a subcontractor and furnished to contractors or other subcontractors were not made or delivered to contractors who furnished products, of which plaintiff's products were a part, under any contract with any Department of the United States of America, as defined in Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942 as amended, or the Renegotiation Act. Plaintiff alleges that information in respect of who was the ultimate purchaser of its products which it furnished to Ranger under the Lend-Lease program, and others of its customers, if any, to whom it sold its products and who may have sold under the Lend-Lease program, is not available to the plaintiff, but such information is available to one or more of the defendants. Plaintiff [fol. 276] prays that each and every defendant be required to make a true and correct statement in his answer to this complaint as to whether such products as plaintiff made for Ranger and others of its customers during its fiscal years ended November 30, 1942 and November 30, 1943, respectively, were made pursuant to contracts with any Department of the United States of America, as defined in Section 403 of the Sixth Supplemental National Defense Appropria Act of 1942 as amended, or the Renegotiation Act.

34. Plaintiff further alleges that notwithstanding the contracts dated prior to April 28, 1942, and the shipments made by plaintiff upon such contracts as aforesaid, Robert P. Patterson, Undersecretary of War, as the delegate of the

War Contracts Price Adjustment Board, conducted the purported renegotiation proceedings for the fiscal year ended November 30, 1943, as if the plaintiff's profits had been derived from contracts subject to the provisions of the Renegotiation Act (February 25, 1944) and in and by his "Order Determining Excessive Profits" for the fiscal year ended November 30, 1943 (dated January 11, 1945), said Robert P. Patterson determined that $1,265,000 of the profits of the plaintiff, before taxes, was excessive profits upon sales of $3,548,845.50 alleged to be subject to renegotiation under the Renegotiation Act (February 25, 1944), whereas, even if said Renegotiation Act be constitutional and be applicable to plaintiff's sales made in the fiscal year ended November 30, 1943 (and plaintiff alleges the contrary to both propositions), there should have been excluded from the shipments made by plaintiff in the fiscal year ended November 30, 1943 such amount as represented contracts of the plaintiff made prior to April 28, 1942, and such further amounts on contracts made after April 28, 1942, as represented shipments made to contractors not having contracts with any Department of the United States of America as defined in the Renegotiation Act enacted February 25, 1944.

35. Plaintiff alleges that during the fiscal year ended November 30, 1942, of its total shipments in the amount of $2,706,477.33, approximately 80% of the dollar value of its shipments were made to Fairchild Engine and Airplant Corporation (Ranger Division), General Motors Corporation (Buick Motors Division, Chevrolet Division and Allison Division), Woodward Governor Company, and the United States Navy; that the shipments to such purchasers during the fiscal year ended November 30, 1942, were upon contracts made between the plaintiff and said purchasers prior to April 28, 1942, the date of the enactment of the Sixth Supplemental National Defense Appropriation Act of 1942, as is more fully shown by the affidavits of B. Ch. [fol. 277] Kelleher which are filed herewith and made a part hereof.

36. Plaintiff alleges that said contracts and the shipments made thereunder described in the foregoing Paragraph (35) are not subject to the provisions of Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942, enacted April 28, 1942, relating to renegotia-

tion; that the aggregate of the shipments made by plaintiff in the fiscal year ended November 30, 1942 to the purchasers named in Paragraph (35) aforesaid under contracts made prior to April 28, 1942, between the plaintiff and said purchasers, was $1,886,770.11; and that said shipments are not subject to renegotiation under the provisions of Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942.

37. Plaintiff further alleges that Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942 and the amendments thereto made during the year 1942 neither subjected nor purported to subject the contracts described in Paragraph (35) above or the shipments of $1,886,770.11 made thereon, described in Paragraph (36) above, to renegotiation, and if said Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942 and the amendments thereto subjected or purported to subject said contracts and shipments described in Paragraph (35) to renegotiation, and Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942 and the amendments thereto, so construed, as applied to plaintiff in regard to said shipments, would be unconstitutional and void and repugnant to the provisions of Amendment V of the Constitution of the United States.

38. Plaintiff further alleges that in the performance of its said contracts with the purchasers named in Paragraph (35) hereof, and in the performance of its undertakings with General Motors Corporation, Packard Electric Division; Studebaker Corporation, and Hudson Motor Car Corporation, it received from time to time, shipping instructions in the form of purchase orders and shipping schedules in such form as was used by the respective purchasers aforesaid, designating their immediate requirements; that of the total shipments of $2,706,477.33 made by plaintiff during the fiscal year ended November 30, 1943, $1,625,023.65 of said shipments were made upon such shipping instructions or so-called purchase orders received by plaintiff prior to April 28, 1942, and $675,823.10 of such shipments were made upon such shipping instructions or so-called purchase orders received by plaintiff after April 28, 1942.

39. Plaintiff further alleges that all of said shipments in the sum of $1,625,023.65 made upon purchase orders re- [fol. 278] ceived by the plaintiff prior to April 28, 1942, are not subject to renegotiation under the provisions of Sec-

tion 403 of the Sixth Supplemental National Defense Appropriation Act of 1942, and if said Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942 were construed as subjecting said sales in the amount of $1,625,023.65, as described in Paragraph (38) hereof, to renegotiation, such Section 403, so construed, would be unconstitutional and void and repugnant to the provisions of Amendment V of the Constitution of the United States.

40. Plaintiff further alleges that during the year 1942 the several divisions of General Motors Corporation forwarded to plaintiff agreements regarding renegotiation, pursuant to and in accordance with the provisions of Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942, as is more fully set forth in the affidavits of B. Ch. Kelleher filed herein and by reference made a part hereof. Plaintiff also alleges that thereafter plaintiff executed said agreements with Allison Division, Chevrolet Division and Buick Division, and plaintiff alleges that the true intent and purpose of said agreements and each of them is that the plaintiff will be subject to renegotiation only if said Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942 should be determined to be constitutional and valid, and then only if said Section 403 be applicable to the contracts of the plaintiff made subsequent to its enactment, and not to contracts made prior thereto. Plaintiff further alleges that Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942 is unconstitutional and invalid by reason of repugnancy to Article I and Article III of the Constitution of the United States and the Amendments V, VII and X thereto, for the reasons assigned in this complaint in respect of the unconstitutionality of the Renegotiation Act. Plaintiff further alleges that each of said agreements aforesaid were made and entered into by the plaintiff without any consideration; that each of said agreements is of no force and effect; and that no proceedings have been taken to renegotiate under any contract or contracts with any individual purchaser in accordance with the terms and provisions of said agreements, and that said agreements did not authorize or purport to authorize renegotiation under the Renegotiation Act, nor were any proceedings taken to renegotiate any of the profits derived by the plaintiff in its fiscal year ended November 30, 1942

under the terms and provisions of Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942.

41. Plaintiff further alleges that except as set forth in Paragraph (40) above, and except as a provision for ad- [fol. 279] justment of prices or renegotiation of profits may be contained in its said contract with the United States Navy, dated August 17, 1941, plaintiff made no agreements for renegotiation of its prices or profits on contracts or shipments made in the year 1942, and consented to no change, modification or alteration of its contracts.

42. Plaintiff further alleges that notwithstanding the contracts dated prior to April 28, 1942, and the shipments made by plaintiff upon such contracts, as aforesaid, Robert P. Patterson, Undersecretary of War, as the delegate of Henry L. Stimson, Secretary of War, conducted the purported renegotiation proceedings for the fiscal year ended November 30, 1942, as if all the plaintiff's profits (except a minor and trivial portion thereof which pertained to sales to the civilian trade) had been derived from contracts subject to the provisions of the Sixth Supplemental National Defense Appropriation Act of 1942, as amended, and in and by his "Unilateral Determination of Excessive Profits" for the fiscal year ended November 30, 1942, dated October 27, 1943, said Robert P. Patterson determined that $775,000.00 of the profits of the plaintiff, before taxes, was excessive profits upon sales of $2,446,000 assumed by defendant Patterson to be subject to renegotiation under the Sixth Supplemental National Defense Appropriation Act of 1942, as amended; whereas, even if said Sixth Supplemental National Defense Appropriation Act of 1942, as amended, be constitutional and be applicable to some of plaintiff's sales made in the fiscal year ended November 30, 1942 (and plaintiff alleges the contrary of both propositions), there should have been excluded from the sales made by plaintiff in the fiscal year ended November 30, 1942, such amount as represented contracts of the plaintiff made prior to April 28, 1942, and such further amounts on contracts made after April 28, 1942 as represented sales made to contractors not having contracts with any Department of the United States of America as defined in the Sixth Supplemental National Defense Appropriation Act of 1942, as amended.

43. Plaintiff alleges that notwithstanding the unconstitutionality of the Renegotiation Act, its illegal and improper administration in respect of plaintiff's business for

the year ended November 30, 1943, and the fact that plaintiff is in good faith prosecuting its petition for Redetermination in The Tax Court of the United States, the defendants herein who constitute the War Contracts Price Adjustment Board have threatened to institute proceedings to order the several customers of the plaintiff to withhold moneys otherwise due to the plaintiff for the account of the United States of Amer- and the defendant, Henry L. Stim-
[fol. 280] son or his delegates, have threatened to, and will, unless restrained by order of this Court, do as they did in the prior year, while said prior petition for redetermination was pending, order the several customers of the plaintiff, other than the United States Government or any agency or instrumentality thereof, to (a) withhold payments due to the plaintiff and (b) to pay the amount now demanded, $1,265,000.00 less tax adjustments into the Treasury of the United States, and thus deprive the plaintiff of any benefit which it may obtain by a determination of The Tax Court of the United States. While, as alleged herein, plaintiff has filed in The Tax Court of the United States, its petition for a redetermination of the amount of excessive profits, if any, due from the plaintiff to the United States of America, for its fiscal year ending November 30, 1943, in and by which petition the plaintiff raises the question of the constitutionality of the Renegotiation Act, the right, power and jurisdiction of The Tax Court of the United States to pass on the constitutionality of the Renegotiation Act, is open to substantial doubt and there is further substantial doubt as to whether The Tax Court of the United States would exercise that right, power and jurisdiction if The Tax Court of the United States has such right, power and jurisdiction. Accordingly the right accorded the plaintiff, by the Renegotiation Act, to file a petition for a redetermination of the amount due as aforesaid is and will be, insofar as the question of constitutionality of the Act is concerned, a barren one and would serve no useful purpose; and, in addition, said Act contains no provision in respect to repayment to the plaintiff of the difference between any lesser amount The Tax Court of the United States shall determine to be due as excessive profits and the amount the Board has determined to be due as excessive profits or the repayment of interest on such amounts as shall have been paid.

44. Unless relief be accorded as herein prayed, plaintiff will suffer irreparable injury in that the withholding from plaintiff of sums due to plaintiff from its customers (not including the United States of America or any agency or instrumentality thereof), or the payment thereof into the Treasury of the United States will:

(A) Compel plaintiff unnecessarily to run the risk of subsequent impaired credit or insolvency of such of the contractors, customers of the plaintiff, as may be directed to withhold money due plaintiff.

(B) Impair plaintiff's working capital essential to the carrying out of its contracts and its subcontracts with contractors. If defendant Henry L. Stimson or his delegates direct the withholding of or the payment into the Treasury of the United States of $1,265,000.00 less tax adjustments, as he or they will unless re- [fol. 281] strained by the Court, plaintiff's operations will be hampered and its business irreparably damaged by the reduction of its working capital.

(C) Force plaintiff to select one or two courses of conduct with respect to continuing shipments to withholding customers, either of which will be irreparably injurious to plaintiff. If plaintiff shall continue to supply products to such customers as have been directed to withhold, plaintiff will impair its assets and the interests of the holders of its capital stock. If it shall refuse to make such shipments, plaintiff will be unable to continue in business, inasmuch as a substantial portion of its market for its products presently is prime contractors with the United States and subcontractors thereof. The termination of plaintiff's business would also substantially injure and impair the war effort inasmuch as the products manufactured by plaintiff are of great essentiality in the production of material essential to the conduct of the war.

(D) Force plaintiff to sue its customers for sums withheld with resultant ill-feeling and irreparable injury to the good-will now existing between plaintiff and its customers and to plaintiff's business with them.

45. Plaintiff is without a plain, adequate and complete remedy at law with respect to the unconstitutional Renegotiation Act and the unauthorized exercise thereunder of power by the defendants herein, inasmuch as:

(A) The legal effect of the threatened and proposed withholding order, or the threatened and proposed order directing payment into the Treasury of the United States, amounts to the illegal seizure of plaintiff's property and leaves plaintiff without adequate legal remedy to recover the same.

(B) The administrative remedy by petition for redetermination in The Tax Court of the United States is wholly inadequate and ineffectual if, as was done by the defendant Robert P. Patterson as a delegate of Henry L. Stimson, following the determination of the amount of plaintiff's profits alleged to have been excessive profits with respect to the fiscal year ended November 30, 1942, and as is now threatened by the defendants with respect to the determination made January 11, 1945 (Exhibit "A"), during the pendancy of said proceedings in The Tax Court of the United States, or thereafter and irrespective of the result thereof, plaintiff's moneys are seized and appropriated without legal remedy to recover the same.

(C) In suit against the United States for sums of money withheld under orders of the defendants, or paid into the Treasury of the United States, the remedy would be neither plain nor adequate because inter alia: (1) the case might be held not within the jurisdiction of the Court of Claims based on tort or contract; and (2) plaintiff could not recover interest for the use of its money.

[fol. 282] (D) Actions against each of the several contractors or subcontractors to recover the sums of money due the plaintiff which the defendants, Stimson or Patterson, or their delegates or subordinates, may direct such contractors or subcontractors to withhold, would require a number of suits at law and in different jurisdictions. Such multiplicity of suits would be costly and vexatious. They would impose on plaintiff and on plaintiff's customers the burden of litigating questions of constitutional law of great public importance. In each such suit, because defendant's determination and order of January 11, 1945 (Exhibit "A") was not a refixing of prices on individual contracts and purchase orders but was the demand of a lump sum portion of plaintiff's entire business in the fiscal year ended November 30, 1943, plaintiff would be subjected

to the insurmountable and impossible requirement of establishing which of its contracts or sub-contracts or purchase orders, if any, were subject to renegotiation and to what extent.

(E) The plaintiff's recovery would be offset, in part at least, by the inevitable loss incident to the termination of business, or loss of good will resulting from such suit against its customers. The value to plaintiff of a subsequent redetermination by The Tax Court of the United States that there existed no excessive profits for the fiscal year 1943 or that the amount thereof was less than that determined by the War Contracts Price Adjustment Board would be offset, in part at least, by the great damage which would be sustained by plaintiff through the loss of good will resulting through termination of business with contractors, its customers, whether brought about by the impairment of plaintiff's working capital or a decision forced upon it to cease filling orders for customers withholding moneys due to plaintiff, or as a result of ill will created through the bringing of suits against such customers.

Wherefore, the plaintiff prays:

(A) That this Court issue forthwith its temporary restraining order against the defendants and each of them, their agents, delegates, assistants, deputies, employees and all other persons acting under their direction or supervision, enjoining and restraining each and all of said persons from:

(1) Directing, instructing or requesting any contractor or subcontractor, or officer, employee or agent thereof, to withhold any moneys due or to become due to plaintiff from any contractor or subcontractor;

(2) From further proceeding in any manner to renegotiate or redetermine contract prices with respect to materials and supplies furnished by plaintiff to any contractor or subcontractor; and

(3) From proceeding in any manner directly or indirectly to enforce or attempt to enforce the determination and order of the War Contracts Price Ad- [fol. 283] justment Board of January 11, 1945 (Exhibit "A", attached to this Complaint) which became operative as of May 3, 1945, or any later

order of the War Contract Price Adjustment Board, or the defendants or either of them, or their delegates, until hearing or determination on the application for an interlocutory injunction.

(B) That upon presentation of the Complaint to a judge of this Court, such judge request the Senior Circuit Judge, or in his absence, the presiding Circuit Judge in which this District Court is located, to designate two other Judges from such circuit to constitute a court under the provisions of Section 380a, Title 28 U.S.C. for the purpose of granting the relief prayed for in designated paragraph C of this prayer for relief.

(C) (1) Upon hearing in respect of whether an interlocutory injunction should be granted, to continue in force until such time as the Court shall determine, the temporary restraining order, which shall have been issued upon the filing of this Complaint and hearing by the judge of this Court.

(2) To grant an interlocutory injunction against the defendants and each of them, their or either of their agents, delegates, assistants, deputies, employees and all other persons acting under their direction or supervision enjoining each and all of said persons from:

(a) Directing, instructing or requesting any contractor or subcontractor or officer, employee or agent thereof, to withhold any moneys due or to become due to plaintiff from any contractor or subcontractor;

(b) Further proceeding in any manner to renegotiate or redetermine contract prices with respect to materials and supplies furnished by plaintiff to any contractor or subcontractor; and

(c) Proceeding in any manner directly or indirectly to enforce or attempt to enforce the determination and order of the War Contracts Price Adjustment Board (Exhibit "A" attached to this Complaint) of January 11, 1945, which became operative as of May 3, 1945, or any later order of the defendants or either of them or their delegates, until hearing or determination of the prayer of the Complaint for a permanent injunction.

(3) Upon final hearing to enter a decree:

(a) Declaring the Renegotiation Act of 1943 un-

constitutional, null and void on the ground that it is repugnant to the Constitution of the United States in that:

(i) It is beyond the powers expressly or im- [fol. 284] pliedly granted to the Government of the United States, or

(ii) It is violative of Amendment V of the Constitution of the United States because it authorizes the taking of property without due process of law, or

(iii) It is violative of Article I, Section 1 of the Constitution of the United States in that it delegates legislative power to others than the Congress of the United States, or

(iv) It is violative of Amendment X of the Constitution of the United States, or

(v) It is violative of Amendment VII of the Constitution of the United States, or

(vi) That it is violative of any combination of grounds mentioned in (i), (ii), (iii), (iv) and (v) above; and

(b) Granting an injunction enjoining the defendants, and each of them, their agents, delegates, assistants, deputies, employees and all persons acting under their direction or supervision from doing any act or thing, in respect of plaintiff or in any way affecting the plaintiff, its business or moneys due to it from anyone, especially contractors and subcontractors, its customers, to enforce, administer, operate under or to carry into execution any of the provisions of the Renegotiation Act, or any order of the War Contract Price Adjustment Board or its delegates in respect of excessive profits received by or accrued to the plaintiff for the fiscal year ended November 30, 1943, or in the alternative:

(4) Upon final hearing to enter a decree granting an injunction enjoining the defendants, their or either of their agents, delegates, deputies, employees or any other person or persons acting under their direction or supervision from eliminating or attempting to eliminate excessive profits of the plaintiff, as determined by the War Contracts Price Adjustment Board, or its delegates, by directing any contractor or subcontractor,

customers of the plaintiff, to withhold for the account of the United States or otherwise any moneys due to the plaintiff, or, directing any such contractor or subcontractors, customers of the plaintiff to pay any money into the Treasury of the United States or any other agency or instrumentality of the United States, which, as determined by the War Contracts Price Adjustment Board or its delegates or the defendants or either of them, are representative of excessive profits, or otherwise until such time as The Tax Court of the United States shall have made a final determination, under the provisions of the Renegotiation Act, of the amount of money, if any, due to the United States from [fol. 285] the plaintiff as excessive profits as defined in the Renegotiation Act, for its fiscal year ending November 30, 1943, or,

(D) If the Court constituted of three judges shall not have granted the relief prayed for in subparagraph (3) of Paragraph (C) of this prayer for relief, and, if, in the determination of the Court of three judges, it is without jurisdiction to grant the relief prayed for in subparagraph (4) of paragraph (C) of this prayer for relief, then, that such court of three judges refer or remand for hearing by the District Court of one judge for consideration in respect of whether such District Court of one judge shall grant the relief prayed for in subparagraph (4) of paragraph (C) of this prayer for relief.

(E) In the event the court of three judges shall determine that it will not grant the relief prayed for in subparagraph (3) of paragraph (C) of this prayer for relief and that it is without jurisdiction to grant the relief prayed for in subparagraph (4) of paragraph (C) of this prayer for relief, that the District Court of one judge enter a decree granting an injunction in accordance with the prayer embodied in subparagraph (4) of paragraph (C) of this prayer for relief.

(F) That upon final hearing the Court, pursuant to the provisions of the Federal Declaratory Judgment Act, declare and decree that the Renegotiation Act is unconstitutional, null and void, and unenforceable against plaintiff.

(G) For such other, different and further relief the Court of three judges or one judge, as the case may be, as in the premises, either such courts, within the sphere of its jurisdiction, may appropriately grant.

Gallagher, Rinaker, Wilkinson & Hall, By Richard Hall, 231 South La Salle Street, Chicago 4, Illinois, and Hill and Crenshaw, By Francis W. Hill, Woodward Building, Washington 5, D. C., Attorneys for Plaintiff.

Copy of Complaint and exhibits received this 2nd day of July, 1945.

Walter W. Lowry.

[fol. 286] *Duly sworn to by B. Ch. Kelleher. Jurat omitted in printing.*

[fol. 287] EXHIBIT A

War Department, Office of the Under Secretary
Washington

Order Under Delegated Authority Determining Excessive Profits

Pursuant to authority duly delegated by the War Contracts Price Adjustment Board, a renegotiation proceeding was duly commenced with Aircraft & Diesel Equipment Corporation (hereinafter called the 'Contractor') with respect to the aggregate of the amounts received or accrued by the Contractor under contracts with the Departments and subcontracts as defined in the Renegotiation Act (such contracts and subcontracts being hereinafter collectively referred to as 'said contracts with the Departments and subcontracts') for the Contractor's fiscal year ended 30 November 1943 (hereinafter called 'said fiscal year').

In connection with such renegotiation proceeding, a conference was held with the Contractor at or in connection with which there were submitted by the Contractor and obtained from governmental or other reliable sources, certain financial, operating and other data relating to the Contractor's business and the Contractor's profits derived from said contracts with the Department and subcontracts

during said fiscal year. At and in connection with such conference the Contractor has been afforded full opportunity to submit such additional information and to present such contentions as the Contractor deemed material to a determination of excessive profits within the meaning of the Renegotiation Act.

In determining the excessive profits hereinafter determined, due consideration has been given to all such financial, operating and other data and information so furnished or obtained, to each of the contentions so presented, and to all of the factors referred to in subsection (a)(4)(A) of the Renegotiation Act.

As a result of such renegotiation it is hereby determined that $1,265,000.00 represents the portion of the Contractor's profits derived from said contracts with the Departments and subcontracts for said fiscal year, which is excessive within the meaning of the Renegotiation Act. After proper adjustment on account of taxes, other than Federal taxes, measured by income which are attributable to that portion of the Contractor's profits derived from said contracts with the Departments and subcontracts for said fiscal year which is not excessive, it is hereby determined that [fol. 288] the amount of excessive profits of the Contractor for said fiscal year which should be eliminated is $1,265,000.00.

This order will be deemed the determination of the War Contracts Price Adjustment Board upon the conditions prescribed in subsection (d)(5) of the Renegotiation Act, then the Secretary of War (or such official or officials in the War Department to whom the power, function and duty of exercising such authority and carrying out such direction may be, or have been delegated or successively redelegated) is hereby authorized and directed to take such action (including the authorization and direction of any other Secretary or Secretaries to take such action) as is provided by the Renegotiation Act and as he deems appropriate to eliminate such excessive profits to be eliminated.

In connection with the payment or discharge by any means of such excessive profits to be eliminated, the Renegotiation Act provides that the Contractor shall be allowed the applicable credit, if any, for Federal income and excess profits taxes as provided in Section 2806 of the Internal Revenue Code.

Dated, Issued and Entered on 11 January 1945.

Robert P. Patterson (signed), Under Secretary of War, Acting on behalf of the War Contracts Price Adjustment Board created by the Renegotiation Act, under due delegations of authority made pursuant to subsection (d)(4) of the Renegotiation Act.

[fol. 289] EXHIBIT B

War Department, Office of the Under Secretary
Washington

Determination of Excessive Profits

Pursuant to Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended.

Whereas, Aircraft & Diesel Equipment Company (hereinafter referred to as the Contractor), holds contracts and subcontracts subject to renegotiations pursuant to the provisions of Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended (hereinafter referred to as the Act); and

Whereas, renegotiations has taken place between the Under Secretary of War and the Contractor, pursuant to the provisions of the Act, for the purpose of eliminating excessive profits realized by the Contractor during its Fiscal Year Ended November 30, 1942, under said contracts and subcontracts; and

Whereas, as a basis for said renegotiation the Under Secretary of War considered certain financial, operating and other data, submitted by the Contractor or obtained by the Under Secretary of War from governmental or other reliable sources, relating to the profits realized by the Contractor during said fiscal year under said contracts and subcontracts; and

Whereas, the Contractor has been granted full opportunity to submit such additional information and to present such contentions as the Contractor deemed material in determining the excessiveness of said profits and the renegotiabilities of such contracts and subcontracts, at hearings of which due notice was given, and due consideration

has been given to the financial, operating and other data and information so furnished or obtained and each of the contentions so presented;

Now, therefore, pursuant to the authority and discretion vested in the Secretary of War, the Secretary of the Navy, the Secretary of the Treasury, the Chairman of the Maritime Commission, the Administrator of the War Shipping Administration, and the respective Boards of Directors of the Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation and Rubber Reserve Company under the provisions of the Act, and duly delegated to the Under Secretary of War under subsection (f) hereof, it is hereby found and determined:

That $775,000 of the profits realized by the Contractor during its Fiscal Year Ended November 30, 1942, [fol. 290] under its contracts and subcontracts subject to renegotiation pursuant to the provisions of the Act, are excessive.

That in connection with the payment or discharge by any means of the amount of excessive profits determined hereby to have been realized by the Contractor, the Contractor shall be credited with any amount to which it may be entitled under Section 3806 of the Internal Revenue Code as computed by the Commissioner of Internal Revenue.

That the Contractor is directed to repay such excessive profits less such tax credit, if any, to the Treasurer of the United States.

That the excessive profits so found and determined shall be eliminated by any of the methods provided in the Act, or any combination thereof; and the Commanding General, Army Service Forces, and the Commanding General, Army Air Forces, are hereby authorized and directed to take any and all action which may be necessary or desirable to effect such elimination.

Robert P. Patterson, Under Secretary of War.

27 October, 1943.

[fol. 291] EXHIBIT C

War Department, Office of the Under Secretary
Washington, D. C.

Sprar

Mr. Francis W. Hill, Jr., Woodward Building,
Washington 5, D. C.

Subject: Renegotiation of Aircraft & Diesel Equipment Corporation for the Fiscal Year Ended 30 November 1942.

Dear Sir:

This will acknowledge your letter of 9 April 1945 in which you request that, as counsel for the above company, you be furnished with a statement of the 1942 determination, of the facts used as a basis therefor and of the reasons for such determination. Inasmuch as these renegotiation proceedings covered a fiscal year ended prior to 1 July 1943, the renegotiation comes under the Renegotiation Act of 1942, not under the Renegotiation Act of 1943. Consequently, there is no statutory requirement that the type of statement which you request be furnished to you and under these circumstances your request can not be granted.

It has consistently been the policy of the War Department not to furnish such statements in connection with the renegotiation of fiscal periods ending prior to 1 July 1943. This policy is based on the fact that, after full consideration in connection with the Revenue Act of 1943, the Congress determined not to require the furnishing of written statements in connection with the thousands of 1942 renegotiations. It was not believed reasonable to assume the administrative burden of attempting to apply retroactively the terms of the new act in this respect to the many cases completed in past periods and under conditions and requirements not clearly specified as in the present law.

For the Chairman:

(Signed) William C. Martens, Lt. Colonel, A.U.S.,
Chief, Renegotiation Branch

[fol. 292] EXHIBIT D

War Department, Office of the Under Secretary
Washington, D. C.

11 January 1945

Aircraft & Diesel Equipment Corporation, 4401 North Ravenswood Avenue, Chicago, Illinois.

Notice of Order Under Delegated Authority Determining Excessive Profits.

Gentlemen:

You are hereby notified by registered mail that pursuant to renegotiation under the Renegotiation Act, and in accordance with authority delegated by the War Contracts Price Adjustment Board, the undersigned acting in its behalf, issued and entered on the date of this letter, an order determining that of your profits derived from contracts with the Departments and subcontracts for your fiscal year ended 30 November 1943, $1,265,000.00 represent excessive profits which should be eliminated. A signed copy of such order is inclosed herewith.

As provided in the Renegotiation Act, such order may, in the discretion of the War Contracts Price Adjustment Board, be reviewed by such Board upon your request, or upon its own motion, but unless such review shall have been initiated within the time prescribed by the Renegotiation Act, such order shall be deemed the determination of the War Contracts Price Adjustment Board.

Very truly yours, (Signed) Robert P. Patterson,
Under Secretary of War, Acting on behalf of the War Contracts Price Adjustment Board created by the Renegotiation Act, under due delegations of authority made pursuant to subsection (d)(4) of the Renegotiation Act.

Inclosure Order

[fol. 293] EXHIBIT E

3 May 1945

Room 3D 573—The Pentagon, Aircraft & Diesel Equipment Corporation, 4401 North Ravenswood Avenue, Chicago, Illinois

Gentlemen:

You are hereby notified that, no review having been initiated by the War Contracts Price Adjustment Board, either on your request or on its own motion, of the order dated, issued and entered on 11 January 1945 pursuant to renegotiation under the Renegotiation Act, by Robert P. Patterson, Under Secretary of War, acting on behalf of the War Contracts Price Adjustment Board in accordance with authority delegated by it, determining that of your profits derived from contracts with the Departments and subcontracts for your fiscal year ended 30 November 1943, One Million, Two Hundred Sixty-five thousand Dollars $1,265,000) represents excessive profits which should be eliminated, such order is deemed the determination of the War Contracts Price Adjustment Board.

A copy of such order is enclosed herewith.

This notice is being mailed to you by Registered Mail on 3 May 1945.

According to the letter dated January 30, 1945, from the Internal Revenue Agent in Charge, the applicable tax credit, as provided in Section 3806 of the Internal Revenue Code, amounts to $994,235.28. Assuming the correctness of the basis upon which the computation of such tax credit was made, as set forth in the aforesaid letter, the balance due the Treasury of the United States is $270,764.72. Any check for this amount should be drawn to the order of the Treasurer of the United States and delivered to the Chairman, War Department Price Adjustment Board, Room 3D 573—The Pentagon, Washington 25, D. C.

Demand is hereby made for the payment of the amount of excessive profits to be eliminated less the applicable tax credit as provided in Section 3806 of the Internal Revenue Code. Interest will accrue at the rate of 6% per annum from and after 18 May 1945 on any amount due under and unpaid.

Very truly yours, War Contracts Price Adjustment Board, By (S.) J. S. Feight, Lieutenant, USNR, Secretary.

Countersigned: (S.) Maurice Hirsch, Col., General Staff Corps, Acting on behalf of the Secretary of War.

[fol. 294] EXHIBIT F

[fol. 295] Before The Tax Court of the United States

AIRCRAFT & DIESEL EQUIPMENT CORPORATION, a Corporation, Petitioner,

vs.

WAR CONTRACTS PRICE ADJUSTMENT BOARD, Respondent

Docket No. —

Petition for Redetermination under Renegotiation Act

1. Your petitioner, Aircraft & Diesel Equipment Corporation, a corporation, respectfully files this petition for redetermination, under the Renegotiation Act, of alleged excessive profits realized by it during the fiscal year commencing December 1, 1942 and ending November 30, 1943, and respectfully shows that:

I

Parties

2. A. Petitioner, Aircraft & Diesel Equipment Corporation, is a corporation organized November 30, 1936, under the laws of the State of Delaware. Since the date of its [fol. 296] incorporation petitioner has been authorized to do business in the State of Illinois as a foreign corporation and maintains its principal office and place of business in the City of Chicago in the State of Illinois. During the fiscal year beginning December 1, 1942 and ending November 30, 1943, and prior and subsequent thereto, it was engaged in the business of manufacturing and selling diesel fuel injection equipment and precision parts and aircraft precision parts.

3. B. Respondent, War Contracts Price Adjustment Board is an agency of the United States of America under the provisions of the Renegotiation Act, and as such is charged with the duty of administering:

(1) Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942 (Public Law 528, 77th Congress) approved April 28, 1942, as amended by

(2) Section 801 of the Revenue Act of 1942 (Public Law 752, 77th Congress) approved October 21, 1942, as amended by

(3) Section 1 of the Military Appropriation Act of 1944 (Public Law 108, 78th Congress) approved July 1, 1943, as further amended by

(4) Public Law 149, 78th Congress, approved July 14, 1943, and as further amended by

(5) Section 701 of the Revenue Act of 1943 (Public Law 235, 78th Congress) effective February 25, 1944, said Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942 and said amend-
[fol. 297] ments thereof being hereinafter referred to as the Renegotiation Act.

II

Jurisdiction of the Court

4. A. This petition is filed pursuant to the provisions of sub-section (c) (1) of Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942, as amended by the "Renegotiation Act."

5. B. Robert P. Patterson purporting to act as a delegate of, and on behalf of the War Contracts Price Adjustment Board, under purported delegation of authority, issued and entered on January 11, 1945, an order purporting to determine that of the profits realized by Aircraft & Diesel Equipment Corporation from contracts with the Departments and sub-contracts for the fiscal year ended November 30, 1943, One Million Two Hundred Sixty-five Thousand Dollars ($1,265,000.00) represented excessive profits which should be eliminated. A copy of said "Order Under Delegated Authority Determining Excessive Profits," dated, issued and entered on January 11, 1945, and a copy of a letter of Robert P. Patterson, dated January 11, 1945, to petitioner enclosing said order, are attached to this petition as Exhibits "A" and "B" respectively.

6. C. Under date of February 28, 1945 (acknowledged and received by the War Contracts Price Adjustment Board on March 3, 1945) (each of said dates being within 60 days [fol. 298] from January 11, 1945, the date of the "Order Under Delegated Authority Determing Excessive Profits," issued by Robert P. Patterson), Aircraft & Diesel Equipment Corporation filed with the War Contracts Price Adjustment Board and the said Robert P. Patterson, its request to said Board to initiate a review of such determination made by the said Robert P. Patterson, dated January 11, 1945, in accordance with the provisions of Section 403 (d) (5) of the Renegotiation Act.

7. On May 5, 1945, petitioner received a letter dated May 3, 1945, from the War Contracts Price Adjustment Board (a copy of which is attached hereto and made a part hereof marked Exhibit C). Enclosed with such letter (Exhibit C) was an order of the War Contracts Price Adjustment Board (a copy of which is attached hereto marked Exhibit D) together with a copy of the Order Under Delegated Authority Determining Excessive Profits, dated January 11, 1945, (a copy of which is attached hereto and marked Exhibit A). The Order and letter (Exhibits C & D) advise petitioner that its request to the War Contracts Price Adjustment Board to initiate a review of its previous determination, as embodied in the Order Under Delegated Authority Determining Excessive Profits, dated January 11, 1945, (Exhibit A) had been considered by the War Contracts Price Adjustment Board and that it had decided not to initiate such a review and that the Order Under Delegated Authority Determining Excessive Profits (Exhibit A) [fol. 299] had become and was the Order of the War Contracts Price Adpustment Board as of May 3, 1945, and for that the ninety day period for the filing of a petition for a redetermination in The Tax Court of the United States began to run May 3, 1945.

8. D. The said "Order Under Delegated Authority Determining Excessive Profits," dated January 11, 1945, (now the order of the War Contracts Price Adjustment Board dated May 3, 1945) was not approved or consented to by your petitioner, and was not embodied in any agreement between the Under Secretary of War, or the Secretary of War, or the War Contracts Price Adjustment Board, and petitioner, Aircraft & Diesel Equipment Corporation, as a

contractor or sub-contractor. No agreement has been made or entered into by and between the Under Secretary of War, or the Secretary of War, or the War Contracts Price Adjustment Board, and petitioner, Aircraft & Diesel Equipment Corporation, relative to a determination of alleged excessive profits realized by petitioner during the fiscal year commencing December 1, 1942 and ending November 30, 1943.

9. E. This petition is filed in the Tax Court of the United States pursuant to the provisions of Section 403 (e) (1) and is filed within 90 days after the date of and the mailing of the order of the War Contracts Price Adjustment Board dated May 3, 1945, "Exhibit D" determining not to initiate a review and adopting as the order of the Board, the previous "Order Under Delegated Authority Determining Ex-
[fol. 300] cessive Profits," "Exhibit A" made by the said Robert P. Patterson, Under Secretary of War, and purporting to act on behalf of the War Contracts Price Adjustment Board.

III

The amount of excessive profits determined by the War Contracts Price Adjustment Board.

10. A. In the "Order Under Delegated Authority Determining Excessive Profits," dated, issued and entered on January 11, 1945, made by the said Robert P. Patterson, Under Secretary of War, purporting to act on behalf of the War Contracts Price Adjustment Board, which becomes the order of the War Contracts Price Adjustment Board, dated May 3, 1945, the amount of alleged excessive profits of the petitioner is determined to be $1,265,000.00 during the fiscal year ended November 30, 1943.

11. B. Copies of the orders dated January 11, 1945, and May 3, 1945, are attached to this petition and marked Exhibit "A" and "(D)", and reference is respectfully directed thereto.

12. C. The determination of alleged excessive profits was not made on the basis of a specific contract or contracts performed by petitioner, but was made upon all that part of the business of the petitioner during the fiscal year commencing December 1, 1942 and ending November 30, 1943, deemed by the War Contracts Price Adjustment Board to be subject to renegotiation.

[fol. 301] 13. D. During the fiscal year ended November 30, 1943, the total sales of the petitioner were $3,548,845.50.

which petitioner in its reports to the War Contracts Price Adjustment Board, separated as follows:

Sales subject to renegotiation	$2,207,574.95
Sales of Standard Commercial Articles (not subject to renegotiation)	1,312,250.07
Civilian sales (not subject to renegotiation)	29,020.48

In the determination made by the War Contracts Price Adjustment Board, apparently no consideration was given to the fact that the sales of Standard Commercial Articles, in the amount of $1,312,250.07, were not subject to renegotiation, and all of said sales were considered as sales subject to renegotiation. Upon the total sales of $3,548,845.50, the War Contracts Price Adjustment Board determined that the Company realized profits of $1,393,470.36 *before* Federal income and excess profits taxes (reduced to $402,129.99 after provision for Federal income and excess profits taxes of $1,100,550.37, less post war refund of excess the sum of $1,265,000.00 was determined to be excessive profits realized by the petitioner.

14. E. Aside from the "Order Under Delegated Authority Determining Excessive Profits," dated January 11, 1945 (Exhibit "A"), the petitioner has not been furnished with any statement setting forth the facts, if any, upon which the determination of excessive profits was based, or any reasons for making such determination.

[fol. 302] 15. F. The only information ever given petitioner as to any alleged basis for the determination of the alleged excessive profits was the oral statement of a representative of the Chicago Office of the War Contracts Price Adjustment Board (where the determination was first made), that said Board had disallowed certain costs of petitioner aggregating $145,000.00 representing alleged excessive salaries paid to petitioner's officers amounting to $125,000.00, bad debts amounting $17,000.00, amortization amounting to $1,000.00, and "reclassified sale of capital assets" in the amount of $2,000.00. Subsequently, in two conferences in Washington, the first with representatives of the War Contracts Price Adjustment Board, and the second with Mr. Julius Amberg, Special Assistant to the said Robert P. Patterson, no statement was made to petitioner as to the basis of said determination other than the assertion of said representative and Mr. Amberg that $1,265,

000.00 represented the amount of petitioner's alleged excessive profits for the fiscal year ended November 30, 1943.

16. G. In the "Order Under Delegated Authority Determining Excessive Profits," dated January 11, 1945, adopted by the War Contracts Adjustment Board as its order of May 3, 1945, (Exhibit "A"), appears the statement:

> "In connection with such renegotiation proceedings, a conference was held with the Contractor at or in connection with which there were submitted by the Contractor and obtained from governmental or other [fol. 303] reliable sources, certain financial, operating and other data relating to the Contractor's business and the Contractor's profits derived from said contracts with the Departments and subcontracts during said fiscal year. At and in connection with such conference the Contractor has been afforded full opportunity to submit such additional information and to present such contentions as the Contractor deemed material to a determination of excessive profits within the meaning of the Renegotiation Act."

Notwithstanding said statements by Robert P. Patterson, Under Secretary of War, the petitioner is still without any knowledge or information concerning the "certain financial, operating and other data relating to the Contractor's business and the Contractor's profits derived from said contracts with the Departments and subcontracts during said fiscal year" allegedly obtained by the Under Secretary, or the War Contracts Price Adjustment Board "from governmental or other reliable sources," and allegedly used in said determination.

17. H. In the "Order Under Delegated Authority Determining Excessive Profits," dated January 11, 1945, adopted by the War Contracts Price Adjustment Board as its order of May 3, 1945 (Exhibit "A"), appears the statement:

> "In determining the excessive profits hereinafter determined, due consideration has been given to all such financial, operating and other data and information so furnished or obtained, to each of the contentions so presented, and to all of the factors referred to in [fol. 304] subsection (a) (4) (A) of the Renegotiation Act."

Notwithstanding said statements by Robert P. Patterson, Under Secretary of War, the petitioner is still without any knowledge or information as to the consideration, if any, allegedly given to all "such financial, operating and other data and information so furnished or obtained," and to the consideration, if any, allegedly given "to all of the factors referred to in subsection (a) (4) (A) of the Renegotiation Act."

IV

Assignment of Errors

18. The determination by the respondent that petitioner received excessive profits during the fiscal year ended November 30, 1943, is erroneous and unlawful in each of the following respects:

A. The Renegotiation Act, in so far as it purports to subject petitioner to renegotiation and to require it to pay any sum whatsoever to the United States on account of its business in said fiscal year, is unconstitutional, void and without lawful effect for the following reasons:

(1) The Renegotiation Act violates the provisions of Amendment V of the Constitution of the United States in that it deprives petitioner of its property without due process of law.

(2) The Renegotiation Act violates the provisions of Amendment V of the Constitution of the United States in that it provides for the taking of petitioner's property without just compensation.

[fol. 305] (3) The Renegotiation violates the provisions of Amendment X of the Constitution of the United States in that it provides for the exercise of power not granted to the United States.

(4) The Renegotiation violates Article I, Section 1, of the Constitution of the United States in that it unlawfully delegates legislative power to the respondent.

(5) The Renegotiation Act violates Amendment VII of the Constitution of the United States in that it deprives petitioner of a jury trial in a controversy cognizable at common law involving more than $20.00.

19. B. The Renegotiation Act as applied to the petitioner is vague, uncertain and indefinite, in that it does not contain:

(1) Any standard, measurement or rule for the determination of excessive profits;

(2) Any description of or restriction upon the data, facts or information to be considered in the determination of such alleged excessive profits, or the weight to be given any such factors;

(3) The factors appearing in Section 403 (a) (4) (A) of the Renegotiation Act are indefinite, vague and uncertain, and the Renegotiation Act fails to establish what weight and consideration are to be given said factors,

and in each of these respects the Renegotiation Act is in violation of Amendments V and X of the Constitution of the United States.

20. C. Each of the acts of the War Contracts Price Adjustment Board, purported to have been taken pursuant to [fol. 306] said Renegotiation Act, as hereafter more particulary set forth, was and is illegal and without lawful effect and was in violation of the provisions of the Constitution of the United States and the Amendments aforesaid in that said acts of said respondent deprived petitioner of property without due process of law and result in the taking of petitioner's property without just compensation.

21. D. The War Contracts Price Adjustment Board erroneously determined that the petitioner realized any excessive profits during the fiscal year commencing December 1, 1942 and ending November 30, 1943, and erred in failing to find and determine that petitioner realized no excessive profits during said fiscal year.

22. E. The War Contracts Price Adjustment Board erroneously determined that the petitioner realized excessive profits of $1,265,000.00 on its sales alleged to be subject to renegotiation during the fiscal year commencing December 1, 1942 and ending November 30, 1943.

23. F. The War Contracts Price Adjustment Board in determining the amount of alleged excessive profits realized by the petitioner, erroneously and illegally disallowed a salary expense in the amount of $125,000; that said War Contracts Price Adjustment Board should have found and determined that said amount was a proper and deductible cost attributable to the making of petitioner's sales.

24. G. The War Contracts Price Adjustment Board in determining the amount of alleged excessive profits realized [fol. 307] by the petitioner, erroneously and illegally disallowed other proper items of petitioner's cost, as set forth

in paragraph 15 hereof, in the sum of $20,000.00; that said War Contracts Price Adjustment Board should have found and determined that said amount was a proper and deductible cost.

25. H. The War Contracts Price Adjustment Board, in its determination of the amount of alleged excessive profits realized by the petitioner, erroneously and illegally included sales of Standard Commercial Articles as defined by Section 403 (a) (7) (A, B, C), made by petitioner in the aggregate amount of $1,312,250.07.

26. I. The War Contracts Price Adjustment Board in determining that petitioner realized excessive profits of $1,265,000.00, erroneously, improperly and illegally failed to give due and proper consideration to the following factors:

(1) Efficiency of the petitioner with particular regard to attainment of quantity and quality production, reduction of costs, and economy in the use of materials, facilities and manpower;

(2) Reasonableness of petitioner's costs and profits, with particular regard to volume of production, normal pre-war earnings, and comparison of war and peacetime products;

(3) Amount and source of public and private capital employed by petitioner and its net worth;

(4) Extent of risk assumed by petitioner, including the risk incident to reasonable pricing policies;

[fol. 308] (5) Nature and extent of petitioner's contribution to the war effort, including inventive and developmental contribution and cooperation with the Government and other contractors in supplying technical assistance;

(6) Character of petitioner's business, including complexity of manufacturing technique, character and extent of subcontracting, and rate of turn-over.

27. J. The War Contracts Price Adjustment Board in making its determination, erroneously and improperly failed to give due and proper consideration to the great amount of the income and excess profits taxes of petitioner for the fiscal year ended November 30, 1943, and their effect upon the Company's earnings.

28. K. The War Contracts Price Adjustment Board, in making its determination of alleged excessive profits, er-

roneously failed to consider and give proper effect to the petitioner's normal earnings on non-renegotiable sales; and likewise erroneously failed to consider and give proper effect to the fact that all of petitioner's sales were made upon strictly competitive basis.

29. L. The War Contracts Price Adjustment Board in making its determination of alleged excessive profits, has acted without authority of law, arbitrarily, capriciously, and without regard to the evidence presented.

[fol. 309] V

Statements of facts

30. *A. Type and Character of Business:*

(1) Petitioner was incorporated November 30, 1936 under the laws of the State of Delaware as the Diesel Equipment Corporation, preparatory to acquiring all the assets of a New York company of the same name. The incorporation and acquisition of the assets of the New York company was prompted by the fact that the New York corporation had just prior thereto entered into a contract with the Allis-Chalmers Company, wherein the latter agreed to purchase from the New York company its entire requirements of diesel fuel injection equipment, and it was deemed advisable to broaden the capitalization of the company so that additional funds would be available to finance the anticipated expansion resulting from the Allis-Chalmers contract. During the fiscal year (December 1, 1936 to November 30, 1937) the company's sales were $509,252.47, upon which it realized a profit of $133,210.22 before Federal taxes. Late in the year 1937 Allis-Chalmers Company changed the design of its engine and discontinued the purchase of fuel injection equipment from petitioner. During the years 1938-1939 the petitioner's operations as manufacturer of diesel equipment were reduced and the manufacture of precision parts for aircraft was commenced. The company's name was changed to Aircraft & Diesel Equipment Corporation on July 11, 1940.

[fol. 310] 31. (2) Petitioner's business during the fiscal year December 1, 1942 to November 30, 1943, as in prior years, consisted of the manufacture and sale of diesel fuel injection equipment, precision parts and aircraft precision parts.

32. (3) Petitioner's procedure in making sales is as follows: Petitioner receives from its several customers designs, blueprints, specifications, and requests for prices. Estimates of unit prices for the quantity of items involved in the inquiry are then made by petitioner and furnished to the prospective customer in the form of a quotation on a unit basis. If the quotation is approved by the customer, the customer then delivers to petitioner a purchase order in such form as the customer uses. After the purchase order is received by the petitioner, work is commenced, and shipments made as promptly as possible. Each individual shipment is invoiced when made. Customer's requests for suspension or termination of shipments are accepted without regard to any volume specified in purchase order, where such suspension or termination does not involve completed or partially completed parts; and even when completed parts or partially completed parts are on hand, adjustments solely for work and labor done, are made and without regard to any volume specified in the purchase order. Petitioner has consistently followed this procedure during all times involved in this proceeding.

33. (4) Petitioner is only one of numerous manufacturers of precision parts located in the United States, and [fol. 311] particularly of precision parts for aircraft engines and diesel fuel engines. The quality of its products, the reasonableness of its prices and its manner of doing business have caused petitioner's operations to be successful.

34. (5) In the data submitted to the War Contracts Price Adjustment Board, petitioner showed that on sales of $2,207,574.48, treated by it as subject to renegotiation, it realized a profit *before* taxes of $853,318.03, or 38.66% of the selling price; that on the sale of products of the character described in the Renegotiation Act as "Standard Commercial Articles," amounting to $1,312,250.07, it realized a profit before taxes of $520,187.45, or 39.64% of the selling price; that on Civilian sales amounting to $29,020.48, it realized a profit *before* taxes of $11,671.34, or 40.22% of the selling price; an overall profit before taxes of $1,385,176.52, or 39.03% of the selling price. *After* provision for taxes these figures were: Renegotiable Business, profit $239,653.90, or 10.86% of sales; Standard Commercial Articles, profit $155,431.97, or 11.84% of sales; Civilian Sales, profit

$7,044.12, or 24.27% of sales, an overall profit of $402,129.99, or 11.33% of sales.

35. (6) In the determination made by the War Contracts Price Adjustment Board, on total sales of $3,548,845.50, the profit *before* taxes is $128,470.36, or 3.63% of the total sales, and the profit *after* taxes is $53,729.99, or 1.51% of the total sales.

[fol. 312] *B. Additional Facts Relied Upon in Support of the Assignment of Error:*

36. In the conferences with the office of the War Contract Price Adjustment Board at Chicago, Illinois, and with delegates or employees of delegates of the War Contracts Price Adjustment Board, Washington, D. C., reference was made by the Board to normal prewar earnings, and comparisons invited. While the Company had but one normal pre-war year, 1937, due to the conditions detailed in paragraph 30 hereof, and the succeeding years, 1938, 1939 and 1940, which were spent in redesigning resulted in either a loss or a small profit, such comparison was easily made.

The following schedule shows the pre-war earnings for the years 1937 and 1941, and percentages of profit in those years compared with the years 1942 and 1943, before and after renegotiation demands:

(Here follows, 1 paster, side folio 313)

[fol. 313]

Aircraft & Diesel Equipment Corporation

Comparative Profit and Loss Before and After Renegotiation Demands

Fiscal years ended November 30, 1937, 1941, 1942 and 1943

Before renegotiation	Year ended November 30, 1937 Amount	Percentage	Year ended November 30, 1941 Amount	Percentage	Year ended November 30, 1942 Amount	Percentage	Year ended November 30, 1943 Amount	Percentage
Sales—Net	$509,252.47	100.000	$1,105,106.75	100.000	$2,706,477.33	100.000	$3,548,845.50	100.000
Cost of sales	296,939.57	58.309	724,724.27	65.579	1,425,316.99	52.663	1,745,738.94	49.192
Gross profit	$212,312.90	41.691	$ 380,382.48	34.421	$1,281,160.34	47.337	$1,803,106.56	50.808
General, administrative and selling expense	86,030.59	16.893	125,660.90	11.371	325,612.42	12.031	412,570.01	11.625
	$126,282.31	24.798	$ 254,721.58	23.050	$ 955,547.92	35.306	$1,390,536.55	39.183
Other income	11,718.01	2.301	3,774.86	.341	7,216.77	.267	8,293.84	.233
	$138,000.32	27.099	$ 258,496.44	23.391	$ 962,764.69	35.573	$1,398,830.39	39.416
Other deductions	4,790.10	.941	28,294.22	2.560	31,398.05	1.160	5,360.03	.151
Income before provision for federal income taxes	$133,210.22	26.158	$ 230,202.22	20.831	$ 931,366.64	34.413	$1,393,470.36	39.265
Provision for federal income taxes	17,228.09	3.383	91,500.00	8.280	667,591.17	24.667	991,340.37	27.934
Net income	$115,982.13	22.775	$ 138,702.22	12.551	$ 263,775.47	9.746	$ 402,129.99	11.331
After renegotiation demands								
Sales—net	$509,252.47	100.000	$1,105,106.75	100.000	$2,706,477.33	100.000	$3,548,845.50	100.000
Reduction in sales—price redetermination					775,000.00	28.635	1,265,000.00	35.645
	$509,252.47	100.000	$1,105,106.75	100.000	$1,931,477.33	71.365	$2,283,845.50	64.355
Cost of sales	296,939.57	58.309	724,724.27	65.579	1,425,316.99	52.663	1,745,738.94	49.192
Gross profit	$212,312.90	41.691	$ 380,382.48	34.421	$ 506,160.34	18.702	$ 538,106.56	15.163
General, administrative and selling expenses	86,030.59	16.893	125,660.90	11.371	325,612.42	12.031	412,570.01	11.625
	$126,282.31	24.798	$ 254,721.58	23.050	$ 180,547.92	6.671	$ 125,536.55	3.538
Other income	11,718.01	2.301	3,774.86	.341	7,216.77	.267	8,293.84	.233
	$138,000.32	27.099	$ 258,496.44	23.391	$ 187,764.69	6.938	$ 133,830.39	3.771
Other deductions	4,790.10	.941	28,294.22	2.560	31,398.05	1.160	5,360.03	.151
Income before provision for federal income taxes	$133,210.22	26.158	$ 230,202.22	20.831	$ 156,366.64	5.778	$ 128,470.36	3.620
Provision for federal income taxes	17,228.09	3.383	91,500.00	8.280	96,591.17	3.569	74,740.37	2.106
Net income	$115,982.13	22.775	$ 138,702.22	12.551	$ 59,775.47	2.209	$ 53,729.99	1.514

[fol. 314] 37. In 1937, the total sales were $509,252.47, the profit *before* taxes was $133,210.22, or 26.158% of the sales. The profit *after* taxes in the same year was $115,982.13, or 22.775% of sales. In the year ended November 30, 1943, the total sales were $3,548,845.50, and the profit *before* taxes was $1,393,470.36, or 39.265% of sales. The profit *after* taxes in the year 1943 was $402,129.55, or 11.331% of sales.

38. Upon the basis of the War Contracts Price Adjustment Board's determination, on actual sales of $3,548,845.50, the profit *before* taxes is $128,470.36, being 3.62% of sales, a decrease of $5,000 in profit on an increase of *seven* times the sales and a decrease of 22.5% in the ratio of profit to sales, as compared to the year 1937.

39. Upon the basis of the War Contracts Price Adjustment Board's determination, on actual sales of $3,548,845.50, the profit *after* taxes is $53,729.99, being 1.514% of sales, a decrease of over $62,000 in profit on an increase of *seven* times the sales, and a decrease of 21.26% in the ratio of sales to profit, as compared to 1937.

40. Petitioner respectfully submits that the 1937 basis either before or after taxes is a proper basis for any redetermination of profits.

41. In the year ended November 31, 1941, the total sales were $1,105,106.75, the profit *before* taxes $230,202.22, or 20.831% of sales. The profit after taxes in the same year was $138,702.22, or 12.551% of sales.

[fol. 315] 42. Upon the basis of the War Contracts Price Adjustment Board's determination for the year 1943, on actual sales of $3,548,845.50, the profit before taxes is $128,470.36, or slightly more than 50% of the 1941 profit before taxes on an increase of *three* times the volume of sales.

43. Upon the basis of the War Contracts Price Adjustment Board's determination, the profit in the year 1943 after taxes is $53,729.99, a decrease of $85,000, allowing about 40% of the profit on an increase of *three* times the sales. Likewise, upon the Under Secretary's determination, the ratio of profit to sales before taxes is decreased from 12.551% to 1.51% of sales.

44. The foregoing is submitted in support of the assignment of errors, paragraphs 18, 19, 20, 21, 22, 25, 26, 27, 28 and 29 of this petition, and in contradiction of the statement appearing in the order of January 11, 1945, that due

consideration had been given all the factors named in paragraph (a) (4) (A) of the Renegotiation Act.

45. In the data filed by petitioner with the War Contracts Price Adjustment Board, it was asserted that $1,312,250.07 of the total sales made by petitioner were the sales of "Standard Commercial Articles," as defined by Section 403 (a) (7) (A, B, C), and petitioner submitted uncontroverted evidence of such facts. In the determination of the War Contracts Price Adjustment Board, no consider-
[fol. 316] ation was given to such sales, and the War Contracts Price Adjustment Board denied the petition for exemption.

46. While the basis of the War Contracts Price Adjustment Board's determination is unknown to petitioner, but since such determination confirmed that of the Chicago Office of the War Contracts Price Adjustment Board, it appears that in the determination of the War Contracts Price Adjustment Board it also disallowed $145,000 of petitioner's costs, as did the Chicago Office, representing $125,000 salary disallowance, and $20,000 of other items. During the fiscal year ended November 30, 1943, a total compensation of $276,051.67 was paid to three persons as follows:

	Salary	Bonus	Total
B. Ch. Kelleher	$26,250.00	$77,433.85	$103,683.85
Chase Mellen, Jr.	13,750.00	77,433.85	91,183.85
M. Van Simmons	3,750.12	77,433.85	81,183.97

47. At the time the present officers assumed the management of the company in 1940, the agreement relating to such managment provided that their total fixed salaries should not exceed $25,000 per year until such time as the annual earnings of the company were at least $100,000 after all charges. It was contemplated, however, that an incentive bonus contract should be made as soon as the petitioner's operations were on a profitable basis. Accordingly, on April 21, 1941 a contract was made between the company and the individuals named above providing for the payment of additional compensation equal to 20% of the net profits in
[fol. 317] excess of $50,000.00 for each six months' period from December 1, 1940 to June 15, 1945. This contract was voluntarily cancelled on August 31, 1943, and no incentive compensation was paid after that date. The net profit on which the additional compensation is computed is deter-

mined before income and excess profits taxes, and before the deduction of the additional compensation, subject, however, to the limitations that the net profits of petitioner for the fiscal year, after deducting all bonuses, all income and excess profits taxes, must exceed $100,000. The said employment contracts were made April 21, 1941. They were approved by the Board of Directors and by the holders of the preferred and common stock, before their execution.

48. Petitioner has no other administrative officers. The persons named above were responsible for management, policies, purchases, planning, general supervision, estimates, sales, deliveries, and schedules. They worked long hours each day, seven days a week and performed services for petitioner which ordinarily would require the entire time of many more administrative officers at total salaries in excess of the salaries paid these individuals. The compensation of these administrative officers was reasonable for the services performed by them and the results achieved.

49. Other items of petitioner's cost in the aggregate of $20,000, comprising $17,000 of bad debts, amortization tion $1,000, and reclassified sale of capital assets, $2,000, [fol. 318] were proper items of cost, and the disallowance thereof was error.

50. In the data submitted to the War Contracts Price Adjustment Board there was included photostatic copies of letters received from Murphy Diesel Company, Chevrolet Division of General Motors, Ranger Aircraft Engines, Buick Division of General Motors, and Busch-Sulzer Diesel Engine Company, the largest purchasers of petitioner's products attesting to the facts (which were not denied by the Chicago Office of the War Contracts Price Adjustment Board) that petitioner secured *all* the business on a competitive bid basis; that petitioner's prices were less than other producers of similar products; that petitioner's record of deliveries was excellent, and schedules were maintained, and that the percentage of rejects on petitioner's products (precision parts) was less than 1/10 of 1% and compared most favorably with the record of other producers. These facts established conclusively that petitioner's earnings were the result of efficiency in management, supervision and shop efficiency and not the result of excessive pricing. It also is convincing proof of petitioner's conservation of steel and man hours. The tabulation appearing in paragraph 36

hereof would indicate that little if any recognition was given to the competitive bids, the quality of the merchandise, the performance of delivery schdules, or of any matter which related to the efficiency of the contractor.

[fol. 319] 51. In the data submitted by the petitioner reference was made to the fact that petitioner had no cost plus contracts, had not received any advance payments, had received no direct loan from the Defense Plant Corporation (certain customers have loaned petitioner equipment which they received from the Defense Plant Corporation), had made no application for a V or VT loan, and except for Certificates of Necessity, petitioner had provided all the capital used in its business and received no financial assistance from the Government. What consideration, if any, was given to this factor by the Under Secretary or by the Board is unknown.

52. In data submitted by petitioner to the War Contracts Price Adjustment Board, petitioner submitted one complete job on diesel parts and one on aircraft precision parts, from the time work commenced to the finished product, and furnished the Chicago Office with a visual inspection of the work being done. The type of work, precision parts, same requiring a tolerance of 2/10,000 of an inch, attests the complexity of manufacture and the risk of manufacture, all assumed by petitioner. This evidence was not contradicted but the consideration, if any, given these factors is unknown.

53. In support of its claim for consideration, under one of the factors mentioned in paragraph 403 (a) (4) (A), petitioner showed that its manufacturing technique had been made known to all its customers, and inspection invited to the end that any other supplier of those customers [fol. 320] might have the advantage of the studies of petitioner.

54. In the data submitted by petitioner attention was directed to the fact that petitioner had but little material cost, and its profit therefore did not arise upon the mere resale of merchandise purchased. The steel supplied petitioner belongs to the customer, it is not invoiced to petitioner and then reinvoiced in the finished form to the customer. Petitioner's service is in its "know how" and efficiency of production, and its profits result from such efficiency.

IV

Relief sought by petitioner

55. *Wherefore Petitioner Prays:*

(a) That the Court find and determine that the Renegotiation Act violates the Constitution of the United States, for the reasons hereinabove assigned, and is void in its entirety and of no force and effect whatever.

56. (b) That if the Court should not grant the preceding prayer for relief, then petitioner prays that the Court find and determine that respondent's determination of excessive profits made on January 11, 1945 constitutes an unlawful and unconstitutional application of the provisions of the Renegotiation Act to petitioner's business for the year ended November 30, 1943, and that said determination of excessive profits is illegal and of no force and effect whatever.

[fol. 321] 57. (c) That if the Court should not grant either of the preceding prayers for relief, then that the Court find and determine that petitioner realized no excessive profits whatever in the fiscal year ended November 30, 1943, within the meaning and intent of said Renegotiation Act.

58. (d) That if the Court should not grant any of the foregoing prayers for relief, then that the Court find and determine that of the sales made by petitioner in the year ended November 30, 1943, $1,312,250.07 represented the sale of Standard Commercial Articles as defined by the Renegotiation Act, and as such should not have been included in the sales subject to renegotiation.

59. (e) That if the Court should not grant any of the preceding prayers for relief, then that the Court also find and determine that the compensation paid by petitioner to its officers in the year ended November 30, 1943 was reasonable and proper in amount, and that all of such compensation constituted a proper element of cost in determining petitioner's net profits, including its net profits on sales, if any, subject to renegotiation.

60. (f) That if the Court should determine that petitioner's sales are subject to renegotiation and that excessive profits have been realized, then that it redetermine the amount of such excessive profits in accordance with the Re-

negotiation Act, and after giving due consideration to petitioner's evidence.

[fol. 322] 61. That the Court grant petitioner such further and additional relief to which it may be entitled.

Aircraft & Diesel Equipment Corporation, By ——, President; Samuel M. Rinaker, Earl B. Wilkinson, Arthur R. Hall, Samuel W. Witwer, Jr., 231 S. La Salle Street, Chicago, Illinois.

[fol. 323] State of Illinois, County of Cook, ss.

B. Ch. Kelleher, being first duly sworn on oath, deposes and says that he is the President of Aircraft & Diesel Equipment Corporation, a corporation, petitioner herein, and is authorized to verify the foregoing petition on behalf of Aircraft & Diesel Equipment Corporation, petitioner herein; that he has read the foregoing petition and that the matters therein set forth are true, except those matters therein alleged upon information and belief, and as to such matters he believes them to be true to the best of his knowledge.

—— ——.

Subscribed and sworn to before me this — day of —, A. D. 1945.

——, Notary Public.

[fol. 324] EXHIBIT A

War Department, Office of the Under Secretary
Washington

Order Under Delegated Authority Determining Excessive Profits

Pursuant to authority duly delegated by the War Contracts Price Adjustment Board, a renegotiation proceeding was duly commenced with Aircraft & Diesel Equipment Corporation (hereinafter called the "Contractor") with respect to the aggregate of the amounts received or accrued by the Contractor under contracts with the Departments and subcontracts as defined in the Renegotiation Act (such contracts and subcontracts being hereinafter collectively referred to as "said contracts with the Departments and subcontracts") for the Contractor's fiscal

year ended 30 November 1943 (hereinafter called "said fiscal year").

In connection with such renegotiation proceeding, a conference was held with the Contractor at or in connection with which there were submitted by the Contractor and obtained from governmental or other reliable sources, certain financial, operating and other data relating to the Contractor's business and the Contractor's profits derived from said contracts with the Departments and subcontracts during said fiscal year. At and in connection with such conference the Contractor has been afforded full opportunity to submit such additional information and to present such contentions as the Contractor deemed material to a determination of excessive profits within the meaning of the Renegotiation Act.

[fol. 325] In determining the excessive profits hereinafter determined, due consideration has been given to all such financial, operating and other data and information so furnished or obtained, to each of the contentions so presented, and to all of the factors referred to in subsection (a)(4)(A) of the Renegotiation Act.

As a result of such renegotiation it is hereby determined that $1,265,000.00 represents the portion of the Contractor's profits derived from said contracts with the Departments and subcontracts for said fiscal year, which is excessive within the meaning of the Renegotiation Act. After proper adjustment on account of taxes, other than Federal taxes, measured by income which are attributable to that portion of the Contractor's profits derived from said contracts with the Departments and subcontracts for said fiscal year which is not excessive, it is hereby determined that the amount of excessive profits of the Contractor for said fiscal year which should be eliminated is $1,265,000.00.

This order will be deemed the determination of the War Contracts Price Adjustment Board upon the conditions prescribed in subsection (d)(5) of the Renegotiation Act. If, and as soon as, this order shall be deemed the determination of the War Contracts Price Adjustment Board, pursuant to subsection (d)(5) of the Renegotiation Act, then the Secretary of War (or such official or officials in the War Department to whom the power, function and duty of exercising such authority and carrying out such

direction may be or have been delegated or successively redelegated) is hereby authorized and directed to take such action (including the authorization and direction of any other Secretary or Secretaries to take such action) as is provided by the Renegotiation Act and as he deems appropriate to eliminate such excessive profits to be eliminated.

[fol. 326] In connection with the payment or discharge by any means of such excessive profits to be eliminated, the Renegotiation Act provides that the Contractor shall be allowed the applicable credit, if any, for Federal income and excess profits taxes as provided in Section 3806 of the Internal Revenue Code.

Dated, Issued and Entered on 11 January 1945.

Robert P. Patterson, Under Secretary of War, Acting on behalf of the War Contracts Price Adjustment Board created by the Renegotiation Act, under due delegations of authority made pursuant to subsection (d)(4) of the Renegotiation Act.

[fol. 327] EXHIBIT B

War Department, Office of the Under Secretary
Washington, D. C.

11 January 1945

Aircraft & Diesel Equipment Corporation, 4401 North Ravenswood Avenue, Chicago, Illinois.

Notice of Order Under Delegated Authority
Determining Excessive Profits

Gentlemen:

You are hereby notified by registered mail that pursuant to renegotiation under the Renegotiation Act, and in accordance with authority delegated by the War Contracts Price Adjustment Board, the undersigned acting in its behalf, issued and entered on the date of this letter, an order determining that of your profits derived from contracts with the Departments and subcontracts for your fiscal year ended 30 November 1943, $1,265,000.00 represent excessive profits which should be eliminated. A signed copy of such order is inclosed herewith.

As provided in the Renegotiation Act, such order may, in the discretion of the War Contracts Price Adjustment Board, be reviewed by such Board upon your request, or upon its own motion, but unless such review shall have been initiated within the time prescribed by the Renegotiation Act, such order shall be deemed the determination [fol. 328] of the War Contracts Price Adjustment Board.

Very truly yours, Robert P. Patterson, Under Secretary of War, Acting on behalf of the War Contracts Price Adjustment Board created by the Renegotiation Act, under due delegations of authority made pursuant to subsection (d)(4) of the Renegotiation Act.

Inclosure Order.

[fol. 329] EXHIBIT C

War Contracts Price Adjustment Board
Washington 25, D. C.

Room 3D 573—The Pentagon

3 May 1945

Aircraft & Diesel Equipment Corporation, 4401 North Ravenswood Avenue, Chicago, Illinois.

Gentlemen:

The War Contracts Price Adjustment Board has considered your request, which was received on 3 March 1945, that it review the unilateral determination entered on 11 January 1945, determining excessive profits of $1,265,000 for your fiscal year ended 30 November 1943, and has decided not to initiate such a review. Accordingly, there is enclosed herewith a formal notice advising you that this unilateral determination is deemed the determination of the War Contracts Price Adjustment Board.

As set forth in paragraph 625.4 of the Renegotiation Regulations, the 90-day period for filing a petition for redetermination in the Tax Court runs from the date of the mailing of the enclosed notice, i.e., from 3 May 1945.

Very truly yours, (Signed) J. S. Feight, Lieutenant, USNR, Secretary.

Encls.

[fol. 330] EXHIBIT D

War Contracts Price Adjustment Board
Washington 25, D. C.

Room 3D 573—The Pentagon

3 May 1945

Aircraft & Diesel Equipment Corporation; 4401 North Ravenswood Avenue, Chicago, Illinois.

Gentlemen:

You are hereby notified that, no review having been initiated by the War Contracts Price Adjustment Board, either on your request or on its own motion, of the order dated, issued and entered on 11 January 1945 pursuant to renegotiation under the Renegotiation Act, by Robert P. Patterson, Under Secretary of War, acting on behalf of the War Contracts Price Adjustment Board in accordance with authority delegated by it, determining that of your profits derived from contracts with the Departments and subcontracts for your fiscal year ended 30 November 1943, One million, Two hundred Sixty-five thousand dollars ($1,265,000) represents excessive profits which should be eliminated, such order is deemed the determination of the War Contracts Price Adjustment Board.

A copy of such order is enclosed herewith.

This notice is being mailed to you by Registered Mail on 3 May 1945.

According to the letter dated January 30, 1945 from the Internal Revenue Agent in Charge, the applicable tax credit, as provided in Section 3806 of the Internal Revenue Code, amounts to $994,235.28. Assuming the correctness of the basis upon which the computation of such tax credit [fol. 331] was made, as set forth in the aforesaid letter, the balance due the Treasury of the United States is $270,764.72. Any check for this amount should be drawn to the order of the Treasurer of the United States and delivered to the Chairman, War Department Price Adjustment Board, Room 3D 573—The Pentagon, Washington 25, D. C.

Demand is hereby made for the payment of the amount of excessive profits to be eliminated less the applicable tax credit as provided in Section 3806 of the Internal Revenue

Code. Interest will accrue at the rate of 6% per annum from and after 18 May 1945 on any amount due under such order and unpaid.

Very truly yours, War Contracts Price Adjustment Board, By J. S. Feight, Lieutenant, USNR, Secretary.

Countersigned: Maurice Hirsch, Colonel, General Staff Corps, Acting on behalf of the Secretary of War.

[fol. 332] [File endorsement omitted]

[fol. 333] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF B. CH. KELLEHER—Filed July 2, 1945

(General Affidavit.)

B. Ch. Kelleher, being first duly sworn, on oath deposes and says that he is now and has been since June, 1940 the President and General Manager of Aircraft & Diesel Equipment Corporation; that affiant has heretofore made and executed affidavits pertaining to contracts and sales made by Aircraft & Diesel Equipment Corporation to various purchasers of its equipment during the fiscal years ended November 30, 1942 and November 30, 1943; that attached to said affidavits are photostatic copies of letters, telegrams and other documents showing the several contracts made prior to April 28, 1942, and computations of shipments made upon said contracts, all of which said separate affidavits are hereby, by reference, adopted and made a part of this affidavit, the same as if copied herein.

Affiant further states that:

(1) All computations contained in said affidavits have been made under affiant's supervision of F. D. Barney and his associates, employees of Lybrand, Ross Bros. & Montgomery, Certified Public Accountants, 231 South La Salle Street, Chicago, Illinois, and that all of said computations have been made from the original books of record of Aircraft & Diesel Equipment Corporation, kept and maintained by the corporation at 4401 North Ravenswood Avenue, Chicago, Illinois.

(2) That he has been advised by his attorneys, Gallagher, Rinaker, Wilkinson & Hall, 231 South La Salle Street, Chicago, Illinois: (a) that the Renegotiation Act, enacted February 25, 1944, did not subject the sales of Aircraft & Diesel Equipment Corporation made in the fiscal year ending November 30, 1943 to renegotiation under said Act; that if said Act be so construed as to subject said sales to renegotiation, then said Act is, to that extent, unconstitutional and void, and the entire sales made during the year 1943 are not subject to renegotiation; (b) that if the Renegotiation Act is determined to be constitutional and valid and to subject sales made in the fiscal year ending November 30, 1943 to renegotiation under said Act, then all sales [fol. 334] made upon the contracts dated prior to April 28, 1942, between Aircraft & Diesel Equipment Corporation and its several purchasers are not subject to renegotiation under said Act; that he has been requested by said attorneys to cause computations to be prepared in such a manner as to show all facts and circumstances in connection with said contracts and with sales made during said fiscal year ended November 30 in each of the years 1942 and 1943, and in such a manner as to reflect: (a) the entire sales of Aircraft & Diesel Equipment Corporation made during the fiscal year ended November 30, 1943 to its largest purchasers upon contracts made by Aircraft & Diesel Equipment Corporation prior to April 28, 1942; (b) the sales made to its largest purchasers during the year 1943 on indiyidual purchase orders received by Aircraft & Diesel Equipment Corporation prior to April 28, 1942; (c) the entire sales of Aircraft & Diesel Equipment Corporation made during the fiscal year ended November 30, 1942, to the largest purchasers upon contracts made prior to April 28, 1942 (the date of the enactment of Section 403 of the Sixth Supplemental National Defense Appropriation Act) in support of Aircraft & Diesel Equipment Corporation's further contention that said Section 403 did not subject said sales to renegotiation under said Section 403, and if said Section 403 be so construed, then that said Section 403 was for that reason, and other reasons, unconstitutional and void; (d) the sales made to the largest purchasers during the year 1942 upon individual purchase orders received by Aircraft & Diesel Equipment Corporation prior to April 28, 1942; and (e) whether said sales or any of

them were sales intended for Lend-Lease; that in the time allowed for the preparation of said computations and the examination of the great number of documents in support of these contentions, affiant has, to the best of his ability, followed said instructions and the computations attached hereto detail such facts.

(3) Said computations show that during the fiscal year ended November 30, 1943, of the total sales of $3,548,845.50 of Aircraft & Diesel Equipment Corporation, $2,780,009.82 of said sales were made to Fairchild Engine & Airplane Corporation (Ranger Division, Buick Division of General Motors Corporation, Chevrolet Division of General Motors Corporation, and Allison Division of General Motors Corporation, upon contracts made between Aircraft & Diesel Equipment Corporation and such purchasers prior to April 28, 1942, as is more fully shown by the separate affidavits made by this affiant pertaining to said four purchasers. That in affiant's opinion, even assuming the constitutionality of the Renegotiation Act (which assumption is in affiant's opin-[fol. 335] ion an erroneous assumption) said sales in the amount of $2,780,009.82 were not subject to renegotiation under the provisions of the Renegotiation Act adopted February 25, 1944; that of said total shipments of $2,780,009.82 in the fiscal year ended November 30, 1943, $175,423.75 of the shipments were made upon so-called purchase orders received by Aircraft & Diesel Equipment Corporation prior to April 28, 1942; that this affiant does not know the ultimate users of some of the products manufactured for said purchasers, but during the year 1943 a substantial part of said shipments (in excess of $210,000) are known to be Lend-Lease shipments; and affiant believes that said shipments and others of similar character were not subject to renegotiation under the Renegotiation Act, even if said act be finally determined to be constitutional.

(4) That in the Determination of Excessive Profits made by Robert P. Patterson, dated January 11, 1945 and confirmed by the War Contracts Price Adjustment Board, May 3, 1945, the total sales of Aircraft & Diesel Equipment Corporation for the year 1943 were considered as subject to renegotiation under the Renegotiation Act passed February 25, 1944, and no attempt was made to eliminate from such sales those (a) upon contracts made prior to the enactment of such renegotiation law, (b) those made upon con-

tracts made prior to April 28, 1942, or (c) those made under Lend-Lease, which were not sales to the United States or any department or agency thereof.

(5) That said computations show that during the fiscal year ended November 30, 1942, of the total sales in the amount of $2,706,477.33 of Aircraft & Diesel Equipment Corporation, $1,886,770.11 of said amount were made to Fairchild Engine & Airplane Corporation (Ranger Division), Buick Division of General Motors Corporation, Chevrolet Division of General Motors Corporation, and Allison Division of General Motors Corporation upon contracts between Aircraft & Diesel Equipment Corporation and such purchasers made prior to April 28, 1942, as is more fully shown by the affidavits of this affiant pertaining separately to each of said four purchasers; that in affiant's opinion, even assuming the constitutionality of Section 403 of the Sixth Supplemental National Defense Appropriation Act of 1942 (which assumption in affiant's opinion is an erroneous one) said sales in the amount of $1,886,770.11 were not subject to renegotiation under the provisions of said Section 403; that of said total shipments of -1,866,770.11, in the fiscal year ended November 30, 1942, $1,625,023.65 of said shipments were made upon so-called purchase orders received by Aircraft & Diesel Equipment Corporation from said above named purchasers and General Motors Corporation (Packard Electric Division), Hudson Motor Car Com-
[fol. 336] pany and Studebaker Corporation, prior to April 28, 1942; that this affiant does not know the ultimate uses of its products during the fiscal year ended November 30, 1942, but a substantial portion of such shipments, in excess of $92,000, are known to be Lend-Lease sales and affiant believes that said shipments and others of a similar nature were not subject to renegotiation under said Section 403 of the Sixth Supplemental National Defense Appropriation Act, even if said Section be constitutional.

(6) That in the Unilateral Determination of Excessive Profits made by Robert P. Patterson for the fiscal year ended November 30, 1942, sales of $2,446,000 were considered as being subject to renegotiation under such Section 403 enacted April 28, 1942, and no attempt was made to eliminate from such sales those (a) made upon contracts had prior to the enactment of such Section 403, and (b) those made under Lend-Lease, which were not sales to the United States or any Department or agency thereof.

(7) That Aircraft & Diesel Equipment Corporation during the years 1942 and 1943 realized no excessive profits; that upon sales of $2,706,477.33 during the year 1942, its profit, before taxes, was $931,366.64, reduced by income and excess profits taxes to $263,775.47, or 9.746% of sales; that upon sales of $3,548,845.50 during the year 1943, its profit before taxes was $1,393,470.36, reduced by income and excess profit taxes to $402,129.99, or 11.33% of its sales.

(8) That the sales made by Aircraft & Diesel Equipment Corporation during the years 1942 and 1943 were not sales made to the United States of America or any agency or department thereof, because of the necessity of the United States of America to acquire speedily and without regard to price any of such articles so manufactured by Aircraft & Diesel Equipment Corporation; but, as is shown by the separate affidavits of this affiant, said sales were made to corporations having capable and efficient purchasing departments, who first requested from Aircraft & Diesel Equipment Corporation, and presumably from others, quotations and estimates, and accepted the quotations of Aircraft & Diesel in numerous instances while rejecting them in other instances; that Aircraft & Diesel Equipment Corporation was prepared to make the articles upon which its quotations were made, including those quotations rejected by said purchasers; that said rejected quotations were all upon parts for aviation engines needed for the completion of the same engines in which the parts manufactured by Aircraft & Diesel Equipment Corporation were used, and presumably said parts not made by Aircraft & Diesel were supplied by other manufacturers of aviation engine parts whose prices were lower than those of Aircraft & Diesel Equip-
[fol. 337] ment Corporation, or for some other reason known to the purchaser of said parts.

(9) That substantially more than one-half of its business during the years 1942 and 1943 was the manufacture of products which the company had made prior to the declaration of war, and that in respect of such business, the cost of producing the device or part, the methods by which it was manufactured and the normal requirements therefor were not only well known in the industry, but also to the armed services of the United States, the Army and the Navy.

(10) That the normally well informed employees of the United States had every opportunity to know the amount

of profits normally derived by manufacturers of similar products and by Aircraft & Diesel Equipment Corporation.

(11) That the idea that the Army and the Navy bought at the highest prices to obtain speed in production is not applicable to the business done by Aircraft & Diesel Equipment Corporation. Affiant's experience reveals that many of company's customers repeatedly questioned quotations made by this company and demanded lower prices; and affiant sometimes found that the company was selling at a loss; that Aircraft & Diesel Equipment Corporation made studies from time to time of its costs on different of its products and, based upon such studies; revised its prices both to higher prices and to lower prices. From the date of the assumption of control of Aircraft & Diesel Equipment Corporation by this affiant and his associates, in June, 1940, to the present date, Aircraft & Diesel, with an unsatisfactory record of performance behind it, experienced difficulties in securing business. Its record of fair and honest dealings with its customers, its prices and its performance in accordance with required specifications and within the time prescribed by its customers, have resulted in the retention and increase of its business, without increasing the cost of its product to the United States of America.

(12) That Aircraft & Diesel Equipment Corporation's profits, giving effect to the increased volume and to its experience in operation are not excessive by comparison with its operations during the year 1937, when, upon sales of $509,252.47, it realized a profit, before taxes, of $133,210.22 or 26.158% of its sales, reduced to $115,982.13 by taxes, or 22.775% of its total sales; that no comparison should be or can be made with the operations of Aircraft & Diesel Equipment Corporation in the years 1938, 1939 and 1940, for the reason that having lost its single customer in the latter part of the year 1937, Aircraft & Diesel Equipment Corporation was compelled to redesign all its products for general use, and the years 1938, 1939 and 1940 [fol. 338] were spent in such redesigning and retooling as made possible its operations in 1941 and subsequent years; that by January 1, 1941 Aircraft & Diesel Equipment Corporation had developed a diesel fuel injection pump of such a nature that sales in excess of the sales actually made in 1941, 1942 and 1943 of aircraft engine parts might reasonably have been expected, with profits upon said pump sales

comparable to the profits actually made in said years (before so-called renegotiation) had not the facilities of Aircraft & Diesel Equipment Corporation been directed to the war effort.

(13) That Aircraft & Diesel Equipment Corporation at all times has operated in a cooperative manner with its purchasers as is best shown by its ability to adapt its facilities to the increasing needs of such purchasers, and that such cooperation has been possible without government aid except for certificates of necessity and for the loan of government-owned equipment from some of its purchasers.

(14) That making due allowances for increased sales, the profits of Aircraft & Diesel Equipment Corporation have been due to shop efficiency, conservation of critical materials and man hours, harmonious labor relations, and not to the alleged necessity of purchasers or of the United States to secure aviation engine parts, regardless of cost and without ample time to secure competitive estimates from other manufacturers of similar parts.

(15) That as of June 27, 1945, the accounts receivable of the company aggregated approximately $190,000 due from over thirty customers; that in order to secure the withholding or the payment of said sum, the United States of America will be required to direct not less than thirty purchasers to withhold payment or to make said payments to the Treasury of the United States; that in the operation of its business the company has secured the good will and approval of its customers; that it has avoided any and all litigation with its purchasers; that Aircraft & Diesel Equipment Corporation will be required to bring suit against more than one of said purchasers to determine the constitutionality of the Renegotiation Act or of Section 403 of the Sixth Supplemental National Defense Appropriation Act, and that it will incur great expenses, and will be required to institute suits in more than one locality, and will by such action seriously interfere with its continued operations in the war effort, sustain loss of time of its employees and destroy the relations now existing between itself and its several customers.

(16) That affiant has caused to be filed and there is now pending in The Tax Court of the United States petitions for redetermination of the alleged excessive profits of the [fol. 339] company for the fiscal years 1942 and 1943, and

that in the event said Section 403 of the Sixth Supplemental National Defense Appropriation Act and the Renegotiation Act be finally declared constitutional, Aircraft & Diesel Equipment Corporation will be required to pay or cause to be paid to the United States of America, such amount as represents excessive profits realized during said years, after appropriate tax adjustments; that until said determination shall have been made, Aircraft & Diesel Equipment Corporation ought not be required to pay the sum of $270,000 as excessive profits for the year 1943, in addition to the $204,000 previously collected before a redetermination in The Tax Court and thereby incur the risk of impairment of its working capital and the impairment of its war effort.

(17) That affiant makes this affidavit for and in support of the complaint heretofore filed in this cause to enjoin the secretaries, as defined in the Renegotiation Act, from directing customers of Aircraft & Diesel Equipment Corporation to withhold or pay into the Treasury of the United States such amounts as shall have been determined by the secretaries or the War Contracts Price Adjustment Board to represent excessive profits, until there has been a determination of the constitutionality of said Section 403 of the Sixth Supplemental National Defense Appropriation Act, and the Renegotiation Act, and, if such final determination be that said acts are constitutional, then until there has been a redetermination in The Tax Court of the United States of the alleged excessive profits realized by the company.

Further affiant saith not.

B. Ch. Kelleher.

Subscribed and sworn to before me this 29 day of June, 1945. Arthur R. Hall, Notary Public. (Notarial Seal.)

(Here follows 1 photolithograph, side folio 340)

SHIPMENTS FOR THE YEAR ENDED NOVEMBER 30, 1942

NAME of CUSTOMER	12-1-41 TO 4-28-42 ORDERS PRIOR TO 4-28-42 REGULAR	12-1-41 TO 4-28-42 ORDERS PRIOR TO 4-28-42 LEND LEASE	4-29-42 TO NOV. 30, 1942 ORDERS PRIOR TO 4-29-42 REGULAR	4-29-42 TO NOV. 30, 1942 ORDERS PRIOR TO 4-29-42 LEND LEASE	4-29-42 TO NOV. 30, 1942 ORDERS AFTER 4-28-42 REGULAR	4-29-42 TO NOV. 30, 1942 ORDERS AFTER 4-28-42 LEND LEASE	TOTAL
RANGER Aircraft Engines, Division Fairchild Engine and Airplane Corporation	$ 1809808	$ 97839	$ 5548839	$ 5660431	$ 4020675	$ 3684477	$ 21879569
GENERAL MOTORS							
Buick	411256		6971065		1323664		8705985
Chevrolet - all divisions	3991571		47526139		24369113		111808023
Allison	1149024		37255195		18958426		57362645
Woodward Governor Company	824896		13383910		3332370		55039216
Navy Dept. Bureau of Supplies & Accounts	353000		7111500		5736250		13200750
	35787799	97839	91412548	5660431	51857911	3684477	188770011
PACKARD ELECTRIC DIVISION							
General Motors	819770		11978695		1937850		19308315
STUDEBAKER Corporation Ordnance Division	2173185		12530216		1891621		53174022
HUDSON Motor Car Co. } U.S. Navy Ordnance Plant Westinghouse Elec. Mfg. Co. } U.S. Navy Ordnance Plant	2076293		87620589		8921645		167598527
	9667348	-	189938800	-	12746196	-	412352344
TOTAL	52553574	97839	410063448	5660431	63877833	3684477	2300846752

SHIPMENTS FOR THE YEAR ENDED NOVEMBER 30, 1943.

ORDERS PRIOR TO 4-28-42		ORDERS AFTER 4-28-42			PERCENT TO TOTAL SALES FOR YEAR ENDED
REGULAR	LEND LEASE	REGULAR	LEND LEASE	TOTAL	NOV 30, 1943
10791029	3867355	10871856	20632940	45252180	
3768729		21832031		25600760	
781083		3289044		3367127	
1815275		8866197		10681472	
		5010932		5010932	
		1741600		1741600	
17156116	3867355	51976184	20632940	93632595	80.45
(4280)		12517987		12513707	
		8853149		8851149	
		1947619		1947619	
(4280)	—	23718755	—	23714475	11.77
17151836	3867355	75694939	20632940	117347070	92.22

[fol. 341] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF B. CH. KELLEHER IN RESPECT OF FAIRCHILD ENGINE AND AIRPLANE CORPORATION (RANGER AIRCRAFT ENGINES DIVISION)—Filed July 2, 1945

B. Ch. Kelleher, being first duly sworn, on oath deposes and says that he is now and has been since June 1940, the President and General Manager of Aircraft & Diesel Equipment Corporation, (hereinafter referred to as "Plaintiff"); that this affidavit pertains solely to the relations of Plaintiff with Ranger Aircraft Engines, a Division of Fairchild Engine and Airplane Corporation, (hereinafter referred to as "Ranger"), and that this affidavit is one of a series of affidavits made by this affiant pertaining to the contracts of Plaintiff with purchasers of its products. This affidavit and the exhibits attached hereto is made in support of the position of Plaintiff that a substantial portion of its sales made in the fiscal years ended November 30, 1942, November 30, 1943 and November 30, 1944 are not subject to renegotiation.

[fol. 342] Affiant states that;

(1) The photostatic copies of the documents attached to this affidavit are all true and correct copies of either letters or telegrams sent by Ranger to Plaintiff or by Plaintiff to Ranger; that the computations attached hereto and made a part hereof marked "Exhibit R-x" have been made by affiant, or by auditors furnished by Lybrand, Ross Bros. & Montgomery, certified public accountants, from the books of original entry kept and maintained by Plaintiff in the ordinary course of its business, and that affiant believes all of said computations to be correct.

(2) In his opinion Plaintiff had a contract with Ranger for the purchase of aircraft parts on October 5, 1940, and at all times thereafter; that said contract was not subject to renegotiation by reason of any subsequently enacted statute, and that the basis for said opinion is as hereinafter set forth.

(3) During the calendar year 1939 and prior to December 1, 1940, Plaintiff had been manufacturing for Ranger twenty-seven (27) parts for aircraft engines; the manufac-

ture of said parts and others continued from December 1, 1939, and during the calendar year 1940. On or about August 19, 1940, Ranger furnished Plaintiff with a schedule showing its requirements for Army engines during the year 1941, and thereafter, and requested Plaintiff to quote prices on said requirements in monthly quantities; that pursuant to said request of Ranger, Plaintiff, on August 30, 1940, wrote to Ranger quoting prices and terms upon thirty (30) parts in monthly quantities in accordance with said schedule for engines for the Army, a copy of which said letter is attached hereto marked "Exhibit R-1" and made a part hereof.

[fol. 343] (4) Thereafter and prior to September 21, 1940, various conversations were had between this affiant and other officers and employees of Plaintiff with Duncan B. Cox, Vice President and General Manager of Ranger, relative to the proposal of Plaintiff, as is attested by letters from Ranger to Plaintiff dated September 21, 1940 and September 30, 1940, copies of which said letters are attached hereto, marked "Exhibits R-2 and R-3" respectively.

(5) Thereafter on October 5, 1940, this affiant advised Ranger by telephone that Plaintiff was prepared to meet Ranger's then schedule, and would waive the provision for advance payment, mentioned in the letter of Plaintiff to Ranger dated August 30, 1940, (Exhibit R-1) if Ranger in turn would waive the necessity of a performance bond by Plaintiff; that this proposal was accepted by Ranger, and Plaintiff then made changes in its shop production, machinery and personnel in order to comply with the Ranger then scheduled requirements.

(6) On or about June 2, 1941, Plaintiff received from Ranger a telegram requesting information as to additional machine equipment necessary to furnish Ranger parts for 200 six-cylinder engines, and 50 twelve-cylinder engines per month, commencing January 1, 1942, a copy of which said telegram is attached hereto and made a part hereof marked "Exhibit R-4". Upon receipt of this telegram, Plaintiff advised Ranger that it had sufficient machine capacity to handle parts for 200 six-cylinder engines, 50 twelve-cylinder engines, starting deliveries January 1, 1942, a copy of which said telegram is attached hereto as "Exhibit R-5".

[fol. 344] (7) Thereafter numerous conferences occurred between this affiant and other officers of Plaintiff and the officers of Ranger, relative to the execution of a contract

between Ranger and Plaintiff whereby Ranger agreed to procure for Plaintiff certain addi-ional machinery and Plaintiff agreed to reserve for Ranger 25% of its plant facilities and production, in order to insure the delivery of the parts needed by Ranger from Plaintiff to meet its scheduled requirements. Such conferences took place in either Plaintiff's offices or those of Ranger, and telephone calls and letters passed between the parties from August 1941, relative to a contract by the terms of which Plaintiff undertook to reserve for Ranger's requirements twenty-five per cent of its production subject to Ranger's continuing orders. All of the terms and conditions of such contract were agreed upon prior to January 1, 1942, including a provision that Ranger would provide Plaintiff with additional machinery, some of which had then (January 1, 1942) been furnished by Ranger to Plaintiff and some of which was later furnished from time to time as it was available. The oral contract between Ranger and Plaintiff was formalized by a written agreement dated as of January 1, 1942. A copy of such contract is attached hereto, made a part hereof and marked "Exhibit R-6".

(8) On December 31, 1941, Plaintiff received from Ranger a telegram requesting information as to additional machinery required to furnish Ranger with 250 sets of Navy parts monthly, a copy of which said wire is attached hereto marked "Exhibit R-7".

[fol. 345] (9) On or about January 31, 1942, Plaintiff received from Ranger a telegram advising Plaintiff that Ranger's schedule for six-cylinder engines had been increased from the then schedule to 400 monthly by July 1942, and that Ranger's schedules for twelve-cylinder engines had been increased from its then requirements to 100 monthly in June 1942, and 500 monthly by January 1, 1943; in said wire, Ranger requested Plaintiff to advise Ranger as to Plaintiff's ability to meet these increased requirements of parts Plaintiff was then making for Ranger, and if additional machinery was necessary to immediately advise. A copy of such telegram is attached hereto as "Exhibit R-8"; and thereafter on February 13, 1942, Ranger again telegraphed Plaintiff as to its increased monthly requirements, and requested Plaintiff to advise what machinery it needed to meet said schedules, a copy of which said telegram is attached hereto as "Exhibit R-9".

(10) On February 14, 1942, Plaintiff advised Ranger of the additional machinery required to meet "400 engines per month starting July 1, 1942", and the additional machinery necessary to meet "875 engines per month by January 1, 1943", a copy of which said letter is attached hereto marked "Exhibit 10"; and on March 17, 1942 and March 20, 1942, Plaintiff advised Ranger in writing of its acceptance of such increased monthly schedules of furnished the machinery, copies of which said letters are attached hereto, marked "Exhibit R-11" and "Exhibit R-12" respect*fully*.

(11) On March 27, 1942, Plaintiff advised Ranger in accordance with Ranger's telephone request, of the additional machinery necessary to meet the requirement of 875 engines per month, a copy of which said letter is attached hereto marked "Exhibit R-13".

[fol. 346] (12) Following the letter of March 27, 1942, (Exhibit R-13) Ranger procured for Plaintiff the additional machinery requested, or substitutes therefor, and Plaintiff installed said machinery and thereafter Plaintiff complied with Ranger's monthly requirements of parts manufactured by Plaintiff to meet said Ranger's monthly engine schedule.

(13) Following each "step up" in Ranger's requirements of engine parts made by Plaintiff, the affiant caused to be made or personally made, (a) shop surveys showing work in production and prior and unfilled orders, (b) an examination of machinery then in Plaintiff's plant, and (c) listings of available personnel for such increased requirements, and affiant made or caused to be made such changes as were necessary to insure Plaintiff's performance of Ranger's requirements or increased requirements. As said increases were made Ranger supplied Plaintiff with steel necessary to meet said increased schedules; that in affiant's opinion Ranger relied upon Plaintiff's ability to supply the parts then being made by Plaintiff for Ranger in the amounts necessary to meet all of the said increased requirements, and such reliance was based upon the agreement of October 5, 1940, as augmented from time to time as to increased amounts of parts to be supplied by Plaintiff.

(14) Commencing February 16, 1943, Ranger's orders for parts on its schedule carried the legend relative to Renegotiation as shown in "Exhibit R-14" attached hereto and made a part hereof.

(15) On February 16, 1943, and at all times prior and subsequent thereto, this affiant believed that the sales made

to Ranger under the arrangements aforesaid were not subject to renegotiation since all of said sales were upon a contract made prior to April 28, 1942; that, in addition, affiant was informed and believed that the provision for [fol. 347] renegotiation appearing in the Sixth Supplemental National Defense Appropriation Act as such was and is unconstitutional and void, and in view thereof no renegotiation could be had under or pursuant to the provision of said Act; that in any event said Renegotiation legend appearing on Ranger's orders after February 16, 1943, did not authorize, direct or permit renegotiation of any sales made in the year 1943, under the terms and provisions of the Renegotiation Act adopted February 24, 1944.

(16) In affiant's opinion all sales made by Plaintiff to Ranger during the years 1942 and 1943 were made pursuant to and in accordance with a contract made between the parties on October 5, 1940, and that all of said sales are exempt from renegotiation; that in order to furnish to the Court and all parties interested, full and complete details, the computation of the Ranger sales during the years 1942 and 1943 have been prepared as set forth in "Exhibit R-15" and "Exhibit R-16" attached hereto and made a part hereof.

Further affiant sayeth not.

B. Ch. Kelleher.

Subscribed and sworn to before me this 29th day of June, A. D., 1945.

Clyde F. DeWitt, Notary Public (Seal)

[fol. 348] "EXHIBIT R-1"

August 30, 1940

Mr. Duncan B. Cox, Vice-President,
Ranger Aircraft Engines,
Farmingdale, L. I., N. Y.

Ranger Army Engine Requirements

Dear Sir:

We have your inquiry of August 19, covering your Army Engine requirements for the year of 1941 or longer, and advise that we will be glad to co-operate fully with you in

meeting the needs of the Army Program for the production of Ranger engines.

We have made a careful study of your requirements as stated in your letter of August 19, and advise that our company has the ability, the willingness, and the desire to supply you with your requirements as given in detail below, every month in the year of 1941 or beyond, provided we will receive your order within 30 days from the date of this letter and we will be given four months' time to prepare parts for shipment.

We are prepared to ship you per month the following items at the prices stated:

Ranger part #	Description of Item	Monthly quantity	Unit Price	Total
5026	Lock-Intake Valve Sprg. Washer	3,600	0.44 per pr.	$414.00
5027	Lock-Exhaust Valve Sprg. Washer	3,600	0.44 per pr.	414.00
5069	Gear-Pr. Oil Pump Driven	300	1.25 ea.	375.00
5158	Shaft-Pr. Oil Pump Driven Gear	300	.34 ea.	102.00

[fol. 349]

Aug. 30, 1940

Ranger Aircraft Engines—2

Ranger part #	Description of Item	Monthly Quantity	Unit Price	Total
5312	Insert Tachometer Gear	600	75.50 per C	$246.00
5367	Jaw-Starter Driving	300	5.07 ea.	1,521.00
6424	Rivet-Valve Rocker Roller	3,600	7.91 per C	144.00
6571	Gear-Tachometer Short	300	4.50 ea.	1,350.00
6624	Gear-Tachometer Long	300	4.50 ea.	1,350.00
6687	Seat-Pr. Oil Relief Valve	300	1.79 ea.	336.00
6689	Spring-Pr. Oil. Rel. Valve Adjusting	300	0.71 per C	96.30
6789	Sleeve-Vac. Pump Drive Gear	300	26.92 per C	80.76
7095	Washer-Fr. Vert. Dr. Shaft Idler Thrust	300	.475 ea.	69.00
7102	Washer-Fr. Vert. Dr. Shaft Upper Gear Thrust	300	.503 ea.	78.00
7103	Washer-Fr. Vert. Dr. Shaft Lower Gear Thrust	300	.395 ea.	66.00
7104	Washer-Fr. Camshaft Gear Thrust	300	.53 ea.	90.00
7237	Shaft-Valve Rocker Hub	3,600	76.40 per C	$1,761.12
7581	Gear-Scav. Oil Pump Drive	300	10.85 ea.	$3,255.00
7673	Shaft-Tech. Dr. Ider Gear	300	.25 ea.	75.00
7874	Gear-Tach. Drive Idler	300	1.38	414.00
7814	Spacer-Crankshaft Gear	300	3.83	1,149.00
7828	Bushing-Cam Box Cyl. Stud Frt.	300	12.00 per C	36.00
*5062	Gear-Accessory Dr. Shaft Front	300	3.34 ea.	1,002.00
*7822	Gear-Lower Front Idler Spur	300	9.89 ea.	2,967.00
*7824	Gear-Upper Front Idler	300	5.75 ea.	1,725.00
*7825	Gear-Rear Idler	600	6.53 ea.	3,918.00
*7826	Gear-Magneto & Vac. Pump Driven	300	9.66 ea.	2,898.00
*7827	Gear-Magneto Drive	300	7.51 ea.	2,253.000
5068	Gear-Pr. Oil Pump Driving	300	1.32 ea.	396.00
*5321	Gear-Accessory Dr. Shaft Rear	300	6.73 ea.	2,019.00

* Note: Forgings furnished by Ranger without cost to us.

[fol. 350] In order to produce the above quantities, additional tools and fixtures will be necessary. We are willing

to limit the tool and fixture charge to $15,000.00, and therefore quote tool charges to you on a time and material basis, limited to a total of $15,000.00.

We did not quote on Gear, Scav. Oil Pump Driven, part #7306, of which we had no drawing, and part #7212, Gear Crankshaft, with which further experimentation is to be made before a definite price can be quoted.

Our above quotation is based upon receiving a definite order from you for at least twelve months' requirements and a cash advance payment of 50% with your order, which advance will be refunded to you at the rate of 50% deducted from all bills rendered by us.

Our quotation is based upon today's prices for material and labor and subject to change in accordance with changes in labor and material upon due proof given to you of such change.

It is understood that all material which you are going to supply against your order will be shipped to us in sufficient quantity and without delay, enabling us to produce the order without unnecessary set-ups or interruptions.

Due to the fact that we will reserve the necessary plant capacity to execute your orders, we will not accept cancellations of any part of the order. Delivery promises are based on normal expectancy, Acts, or demands of the United States Government, fires, strikes, accidents to machinery or other causes unavoidable or beyond our control. Any quantity up to 10% in excess of or less than the quantity ordered will be regarded as completing the order.

[fol. 351] Any changes in the design or material of the parts will be charged provided such changes will cause extra operations or delays in the execution of the particular part.

In closing, we wish to state that since we have made the parts in question in the past and we are making some of them at the present time, we are entirely familiar with all the problems related to the parts quoted and we are in a position to produce them at the rates specified and of the quality you would require.

Hoping that we shall be favored with your valued order, we are

Yours very truly, Aircraft & Diesel Equipment Corporation, by—President. BCK:t

[fol. 352] "EXHIBIT R-2"

Ranger Aircraft Engines

Division of Fairchild Engine & Airplane Corporation
Farmingdale, L. I., N. Y., Phone: Farmingdale 280

September 21, 1940

Mr. Kelleher, Pres. & Gen. Mgr.
Aircraft & Diesel Equip. Corp.
4401 N. Ravenswood Avenue
Chicago, Illinois

Dear Mr. Kelleher:

All of us appreciate very much the opportunity yesterday to discuss our mutual problems, and we were glad that you were able to take enough time to meet so many of our organization.

We are going to rush consideration of the two basis on which your company would like to do business with us, and just as soon as the decision is made, we will advise you so that no time will be lost for either of us.

For your files, there is enclosed a carbon of the retype of my pencil notes; which were taken at the conclusion of the conversation with you and Mr. Mellen, and which were read back to you.

We are looking forward to a continuing large volume of business with your company, and we hope that this will be accompanied by frequent opportunities for your organization and ours to get together and directly discuss mutual problems.

Sincerely yours, Ranger Aircraft Engines, Duncan B. Cox, Vice Pres. & Gen. Mgr..

DBC:RAH
enclosure
cc — Mr. Mellen

[fol. 353] Mr. Mellen, Mr. Kelleher, Mr. Koster and Mr. Cox on September 20, 1940 agreed:

(1) Diesel now has $270,000 unfilled and is shipping about $70,000 per month.

(2) Diesel offers to accept orders from Ranger on basis of quotations computed by same method as those in letter dated August 30, 1940 for following amounts per month of delivery:

(a) $10,000 per month standing deliveries in four months with no deposit and no additional capacity reserved beyond orders placed.

(b) $30,000 per month starting in four months, if a 50% deposit is made. Under these conditions Diesel will also reserve for us (give first refusal) on an additional $15,000 per month of deliveries, making a total of $45,000 per month for two years.

(3) Diesel will secure deposits with a performance bond satisfactory to our counsel and repay deposit by permitting a reduction of 50% in the amount of each invoice until deposit is repaid.

(4) "Reserve" in paragraph 2b above means if Diesel desires to accept orders from others which encroach on Rangers reserved capacity Diesel will advise Ranger and Ranger shall promptly state the length of time for which the reserved capacity is not required by Ranger. At the conclusion of this time Ranger shall place orders if Diesel has not been notified one month in advance that reserve period has been extended.

(5) The foregoing excludes all orders already placed which Diesel agrees to deliver as promised.

(6) This agreement is to replace and superceed agreement made with Ranger by Mr. Mellen, Foder, and Blakey.

(7) Diesel agrees to carry out the terms of this agreement on the basis of either 2a or 2b if notified by Ranger within two weeks.

(8) Diesel can get machinery at auction to be held on 25th but must have the cash deposit to bid. Otherwise new machinery deliveries must be facilitated by Ranger to meet deliveries. Machinery cost $60,000, tooling $15,000, inventory $75,000.

Duncan B. Cox

DBC:RAH

[fol. 354] "EXHIBIT R-3"

Fairchild Engine and Airplane Corporation
30 Rockefeller Plaza, New York, N. Y.

Air Mail

September 30, 1940

Mr. Chase Mellen
Aircraft & Diesel Equipment Corp.
4401 N. Ravenswood Avenue
Chicago, Illinois

Dear Mr. Mellen:

It is necessary that Mr. Cox be out of town several days this week and, in view of this, he requested that I communicate with you for the purpose of advancing the arrangements discussed at Farmingdale last week. Unfortunately, when I phoned your office I found you were en route to Chicago.

I gather that the tentative arrangement concluded at Farmingdale is satisfactory to you and, if so, it appears that the next step is to work out the type of bond that will cover either performance, or the repayment of our advances, if such *such* should ever be required.

We are, of course, anxious to move quickly as are you and, therefore, if I can be of any assistance, please call upon me during Mr. Cox's absence.

Also, if you return to New York within the next day or two, it may be helpful if we can confer on the matter.

Cordially yours, W. H. Schwebel, Secretary-Treasurer.

WHS:NML
cc: Mr. D. B. Cox

[fol. 355] "EXHIBIT R-4"

CB87 TWS Paid 3—TDN Farmingdale NY 2 332P Jun 2 PM 2.50 Aircraft and Diesel Equipment Corp—4401 North Ravenswood Ave—

Advise if and what additional machine equipment necessary to furnish us facilities for 200 sixes and 50 twelves per month starting January delivery. Require this information before June Fourth—

Ranger Aircraft Engines E Koster.

200 50.

[fol. 356] "EXHIBIT R-5"

June 2, 1941.

Ranger Aircraft Engines, Mr. E. Koster, Farmingdale, L. I., New York.

Retel believe we have sufficient machine capacity to handle parts for 200 - 6's and fifty twelves starting January delivery. This of course takes into consideration machinery plus Monarch lathe now on order through your Mr. Lloyd.

Aircraft & Diesel Equipment Corporation, B. C. Kelleher.

[fol. 357] "EXHIBIT R-6"

Agreement dated as of the 1st day of January, 1942, between Fairchild Engine and Airplane Corporation, a Maryland corporation, acting through its Ranger Aircraft Engines Division (hereinafter called Ranger), and Aircraft & Diesel Equipment Corporation, a Delaware corporation, (hereinafter called Diesel).

Ranger is engaged, among other things, in the manufacture and sale of in-line air-cooled airplane engines at its plant in Farmingdale, Long Island, New York, and in connection with such manufacture purchases from others certain gears and other parts for incorporation in said engines.

Diesel is engaged, at its plant in Chicago, Illinois, in the manufacture and sale of precision gears and other parts for installation in airplane and automotive engines.

Ranger has advised Diesel that it desires to purchase from Diesel a substantial portion of the gears, together with certain other parts of types now on order from Diesel (hereinafter collectively called gears), required for its present and future production program and Diesel desires to sell such gears to Ranger. Diesel has advised Ranger that it desires to avoid jeopardizing its present sound position to the fullest extent possible, consistent with meeting its [fol. 358] obligations in the present national emergency. Diesel will not be able, without increasing its gear-manufacturing machinery equipment, to supply Ranger, within the time desired by Ranger, with the gears which Ranger desires to purchase from Diesel and is unable to make the capital expenditure necessary for an increase in its gear-

manufacturing capacity which may be required only during the existing national emergency, the duration of which is uncertain.

Ranger desires and Diesel is willing that Diesel's gear-manufacturing capacity shall be increased. Ranger has entered into a contract dated December 31, 1940 (hereinafter called contract NOd-1646) with the United States of America (hereinafter called the Government) pursuant to which certain machinery listed in Schedule A attached hereto (hereinafter referred to as the machinery) has been or will be purchased by Ranger and delivered to Diesel; Diesel represents that it has good and marketable title to the land, described in Schedule B attached hereto, upon which the machinery is to be located, that such land is accurately described in said Schedule B, and that such land is not subject to any lien or encumbrance which will or may attach to the machinery when installed.

In consideration of the premises and of the mutual agree-[fol. 359] ments hereinafter set forth, the parties hereto agree as follows:

1. Delivery and Installation of the Machinery. Ranger will use its best efforts to purchase and have delivered f.o.b. Diesel's plant at 4401 North Ravenswood Avenue, Chicago, Illinois, such of the units of machinery, or substitutes therefor, as Ranger has not heretofore purchased and delivered to Diesel's plant, and Diesel will, upon receipt of each unit of the machinery, promptly install such unit in said plant. Diesel shall pay, and include in its general overhead expense, the cost of installing the machinery.

Ranger shall not be liable for any injuries, including injuries resulting in death, or for loss or damage to property resulting from the installation, operation or maintenance of the machinery by Diesel and Diesel shall indemnify and save harmless Ranger from and against any and all claims by third parties as the result of said injuries, loss or damage.

2. Ownership of Machinery. Each unit of the machinery shall remain and at all times be personal property and shall not in any manner be or become part of any realty by reason of its installation in Diesel's plant or affixation thereto. Title to each unit of the machinery shall at all times remain and be in Ranger and/or the United States as their respective interests may appear, and Diesel's only

interest therein shall be as the bailee thereof in accordance with the terms of this agreement. Diesel shall at all times keep affixed to each unit of machinery legible and conspicuous metal tags or plates, in such form as directed by Ranger, and shall take such other action as Ranger may from time to time request in writing for the purpose of [fol. 360] marking or identifying each unit of the machinery so as to make each such unit readily identifiable as having been furnished hereunder and to indicate the Government's equitable interest therein.

Diesel shall not allow any mortgage or other lien to become an encumbrance upon the machinery or any unit thereof and shall promptly remove any lien which may attach thereto.

3. Insurance and Taxes. Diesel shall, in respect of the machinery, take out and maintain insurance against such risks as similar machinery is customarily insured against in the locality of Diesel's plant, or as directed by Ranger, and in such amounts as Ranger shall from time to time specify by notice in writing. The policies evidencing such insurance shall provide for the payment of any proceeds thereof to, and shall be deposited with, Ranger or such other corporation, firm, individual or government agency as Ranger shall direct. Diesel shall pay and include in its general overhead expense, the cost of all such insurance.

In the event that the machinery or any part thereof shall be destroyed or damaged, Diesel shall immediately notify Ranger in writing in detail of the cause and extent of such damage and the estimated cost of restoring, reconditioning or replacing the machinery so destroyed or damaged and shall cooperate with Ranger in taking such action, if any, [fol. 361] as the Government may require or permit Ranger to take with respect to the restoration, reconditioning or replacement of the machinery so destroyed or damaged.

Property tax returns covering the machinery shall be made by Diesel for Ranger in Ranger's name and Diesel shall pay the local taxes levies or assessed against the machinery or against Ranger or Diesel by reason of the ownership or operation thereof and charge the amount of such taxes to and include the same in its general overhead expense. Ranger shall cooperate with Diesel in making such returns or authorizing Diesel to execute the same in Ranger's name.

4. Maintenance. Diesel shall, at its own expense, care for and maintain the machinery and forthwith comply with any directions given by Ranger with respect to the care and maintenance thereof; upon the termination of this agreement Diesel shall return the machinery to Ranger in a good state of maintenance and repair except for destruction, wear or damage normally incident to the production carried on by Diesel and not caused by the fault or negligence of Diesel.

[fol. 362] 5. Manufacture of Gears. Diesel, to the extent of twenty-five per cent. (25%) of its "present total capacity" as hereinafter defined, will manufacture and sell to Ranger all such gears and parts as now manufactured by Diesel or which can be manufactured by Diesel with the use of the machinery as Ranger shall from time to time order from Diesel. "Present total capacity" shall mean the entire capacity of all Diesel's present machinery and equipment as presently operated plus the entire capacity of the machinery and equipment to — furnished by Ranger as herein provided. It shall not include additions to machinery and equipment, if any, hereafter installed by Diesel or other customers of Diesel, or any machinery, in addition to the machinery specified in Schedule A hereto, which may subsequently be loaned to Diesel by Ranger. Diesel may add additional machinery and equipment, provided, however, the operation of same shall not interfere with the efficient manufacture of gears and parts by Diesel for Ranger as herein provided.

6. Price Structure. From time to time at Ranger's request Diesel will quote to Ranger the prices at which Diesel will manufacture for Ranger gears of the various types specified by Ranger, and Ranger will from time to time issue individual purchase orders for such gears and parts as it shall desire to purchase. Prices quoted or included in accepted orders shall be adjusted from time to tome at any [fol. 363] time during the progress of the work by increase or decrease as the case may be in accordance with fluctuation in the costs of Diesel. Delivery dates and terms of payment shall be agreed upon and incorporated in each order. Delivery dates agreed upon shall be maintained subject to delays caused by fire, wind or damage to or destruction of plant or equipment, strikes, lockouts, Federal or State laws and regulations, or other causes beyond the con-

trol of Diesel. All prices so quoted by Diesel to Ranger shall be prices computed in accordance with Diesel's usual method of estimating quoted prices (estimated direct labor and material costs, plus the equitable portion of Diesel's fixed and general overhead, plus a reasonable profit), with which method Ranger is familiar, provided that the prices so quoted to Ranger shall not include any charges (including amortization and depreciation), other than such charges, as are expressly authorized herein, for or in respect of the machinery. Such prices shall not be in excess of prices quoted to other customers for similar work less any charges in connection with the machinery (except such charges as are authorized herein). Diesel will agree to the inclusion in all such purchase orders of any conditions or agreements required by law to be included therein or which Ranger is required by law to cause to be included therein. [fol. 364] 7. Priority as to 25% of capacity; use of Ranger machinery on other orders. Subject to the provisions of paragraph 8 hereof, all orders for the purchase of gears and parts given by Ranger to Diesel and accepted by Diesel shall have full priority of the use of twenty-five per cent (25%) of Diesel's present total capacity as defined in paragraph 5 hereof, and Diesel will use on Ranger orders the machinery best fitted and adapted to Ranger's gears and parts, regardless of whether owned by Ranger or Diesel, and correspondingly Diesel may, without payment to Ranger, use Ranger machinery, or any one or more units thereof, in connection with filling orders for others than Ranger within the limits of the capacity herein reserved by Diesel for others.

8. Temporary Waiver of Priority. If at any time Diesel does not have orders from Ranger requiring the use of twenty-five per cent 25%) of Diesel's present total capacity as defined in paragraph 5 hereof and shall desire to accept orders from others than Ranger, to the amount of such deficit, Diesel may give notice to Ranger of such desire and the details of such orders and the estimated time required to fill the same. If within thirty (30) days after [fol. 365] receipt of such notice, Ranger shall not place orders with Diesel up to said entire twenty-five per cent (25%) of capacity Diesel may then accept sufficient of said orders from others to absorb, for a period not in excess of sixty (60) days, the part of said deficit not absorbed by Ranger

during said thirty (30) days and the use during such period of sixty (60) days by Diesel of its own machinery and the machinery of Ranger in connection with filling any part of the orders described in such request shall not be deemed a violation of the priority stipulations contained in this contract. Despite the acceptance of any such other orders, Diesel will use its best efforts to fill promptly all such orders as may thereafter be given to it by Ranger, it being the true intent and purpose hereof that Ranger and Diesel shall each use its best efforts to cooperate to the end that Ranger shall obtain prompt delivery of the gears ordered by it.

9. Term and Termination. Unless theretofore terminated in accordance with the provisions of this paragraph, this agreement shall terminate on December 31, 1945.

This agreement may ge terminated at any time

A. By Ranger if

(a) contract NOd-1646 shall terminate or be terminated by the Government or by Ranger pursuant to the terms thereof;

[fol. 366] (b) Diesel shall be in default under or shall breach any of its obligations contained in this agreement or any purchase order accepted by it from Ranger (including failure by Diesel to meet its delivery commitments on any such order); or

(c) Diesel shall become insolvent or shall file or have filed against it a petition in bankruptcy or shall take or attempt to take the benefit of any law for the relief or aid of debtors or shall make an assignment for the benefit of creditors, or a receiver of Diesel or of all or substantially all its property shall be appointed; and

B. By Diesel if

(a) Ranger shall be in default under or shall breach any of its obligations contained in this agreement of any purchase order accepted by Diesel from Ranger;

(b) Ranger shall become insolvent or shall file or have filed against it a petition in bankruptcy or shall take or attempt to take the benefit of any law for the relief or aid of debtors, or shall make an assignment for the benefit of creditors, or a receiver of Ranger or of all or substantially all its property shall be appointed; or

[fol. 367] (c) at any time, due to lack of orders from Ranger or others, the machinery installed in Diesel's

Plant, including machinery belonging to Ranger, shall have been operated at an average of less than twenty (20) hours per week per machine during the preceding three calendar months and the Government shall permit the termination of this agreement;

provided, however, that no failure by either party to exercise any right of termination herein given shall be deemed to be a waiver of such right in that or any future instance.

10. Inspection of Machinery. The Chief of the Bureau of Aeronautics, United States Navy, his duly appointed successor or authorized representative, and authorized representatives of Ranger shall at all times be afforded proper facilities for inspection of the machinery, both during and after installation, and shall at all reasonable times have access to Diesel's premises, work and materials, and to all records and books of account relating to the machinery, its care, maintenance, restoration, reconditioning or replacement, which records and books of account shall be kept by Diesel.

11. Protection of Machinery. Diesel shall comply with any requests and instructions which the Government shall require Ranger to make or give Diesel as to precautionary and protective practices to be adopted and measures to be taken to protect the machinery form destruction or damage, but this paragraph shall not release Diesel from the consequence of any fault or negligence on its part.

[fol. 368] 12. Non-discrimination in Employment. Diesel, in performing the work required by this agreement, shall not discriminate against any worker because of race, creed, color, or national origin.

13. Recordation. Diesel will duly record a copy of this contract in such manner as Ranger may require.

14. Reports as to Liens and Encumbrances. Diesel shall, within four (4) months after the installation of all the machinery, furnish Ranger with a report of a title company or other evidence of the condition of the title, satisfactory to Ranger, showing whether there were, ninety (90) days after such installation, any mortgages or other liens upon the machinery or the land or buildings upon or in which such machinery is located; and, within thirty (30) days after the end of the calendar year in which such report is furnished and of each year thereafter until the termination of this agreement, Diesel shall furnish to Ranger a continu-

ation report by a title company, if the original report was by a title company, or otherwise a continuation report of the character of the aforesaid original evidence, satisfactory in each case to Ranger, upon such title, showing the existence or non-existence of any such mortgages or liens.

15. Notices. Any notice to be given hereunder by either [fol. 369] party hereto to the other shall be in writing and shall be sufficiently given if sent by registered mail, in a postage prepaid envelope, if to Ranger addressed to Fairchild Engine and Airplane Corporation, Ranger Aircraft Engines, Farmingdale, Long Island, New York, and if to Diesel addressed to Diesel at 4401 North Ravenswood Avenue, Chicago, Illinois.

16. Assignment. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided that this agreement shall not be assignable by either party by operation of law or otherwise without the express written consent of the other.

In witness whereof the parties hereto have executed this agreement the day and year first above written.

Fairchild Engine and Airplane Corporation, by H. H. Budds, Vice President. Aircraft & Diesel Equipment Corporation, by B. Ch. Kelleher, President.

Attest: N. E. Speel, Assistant Secretary.

Attest: M. Van Simmons, Secretary.

[fol. 370] State of New York,
County of Suffolk, ss.:

On this 11th day of September, 1942, before me personally appeared H. H. Budds, to me known, who, by me being duly sworn, did depose and say that he resides at Garden City, New York; that he is Vice President of Fairchild Engine and Airplane Corporation, the Corporation described in and which executed the foregoing instrument; that he knows the seal of said Corporation; that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Elbert H. Wild, Notary Public, Certificate Filed Nassau Co. Clk. No. 31W43, Queens County Clerk's No. 2879, Queens County Register No. 9484, Term Expires March 30, 1943.

[fol. 371] State of 1st, County of ——, ss.:

On this — day of October, 1942, before me personally appeared B. Ch. Kelleher, to me known, who, by me being duly sworn, did depose and say that he resides at Chicago, Illinois: that he is President of Aircraft & Diesel Equipment Corporation the Corporation described in and which executed the foregoing instrument; that he knows the seal of said Corporation; that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation, and that he signed his name thereto by like order.

T. J. Murphy, Notary Public, My Commission Expires Sept. 1, 1946.

[fol. 372] Aircraft and Diesel Equipment Corporation

SCHEDULE A

2	#7125A Fellows Gear Shaper	NEPF No. 2463, 2464
1	6" x 18" Landis Plain Grinder	2466
1	#72A3 Heald Sizematic Internal Grinder	2468
1	10" x 24" Landis Universal Grinder	2467
1	2½" Cleveland Turret Lathe	2469
1	2" Cleveland Turret Lathe	2470
2	#6W Cincinnati Universal Turret Lathe	3156, 3157
1	14" x 54" Monarch Tool Room Lathe	4186
1	#777 Spur Gear Testing Fixture	2465

[fol. 373] Aircraft and Diesel Equipment Corporation

SCHEDULE B

Aircraft and Diesel Equipment Corporation, 4401 North Ravenswood Avenue, Chicago, Illinois, situated as follows:

"Lots Thirteen (13), Fourteen (14), and Fifteen (15) (Except the North 45 feet of lot fifteen (15) in Block Nineteen (19) in Ravenswood in the South Half of the Northeast Quarter of Section Eighteen (18), Township Forty (40) North, Range Fourteen (14), East of the Third Principal Meridian, In Cook County, Illinois."

[fol. 374] "EXHIBIT R-7"

CL88 TWS Paid—3-TDN WUX Farmingdale NY 31 1251 P 1941 Dec 31 PM 12 49 Aircraft and Diesel Equipment Corp—4401 North Ravenswood Ave—

Advise NY wire or phone today sure additional machines if any necessary to furnish us with 250 sets all Navy parts monthly. Require name of basic machines needed and type. This information necessary to comply with Navy directive.

Ranger Aircraft Engines, E. Koster.

[fol. 375] "EXHIBIT R-8"

CAH226 TWS Paid 3-TDN Farmingdale NY 31 115 1942 Jan 31 PM 1 31 Aircraft and Diesel Equipment Corp—4401 North Ravenswood Ave—

Anticipate firm monthly requirements of six cylinder engines increasing from present schedule to 400 by July 1942 and 875 January 1943. Also firm monthly requirements for twelve cylinder engines increasing from present schedule to 100 in June 1942 and 500 January 1943. Request you advise by return wire your ability to meet these increased requirements of parts you are now making and additional facilities if any required by you to meet this program. Essential this information be in our possession by noon Monday February second.

Ranger Aircraft Engines, E. Koster.

400 1942 875 1943 100 1942 500 1943.

[fol. 376] "EXHIBIT R-9"

LD824GL (8144CC) TWS Paid 3 Duplicate of Telephoned Telegram—WUX TDN Farmingdale NY Feb 13 1942 543P Aircraft and Diesel Equipment Corp. Attn C Kelleher 4401 North Ravenswood Ave Chgo.

Supplementing our wire of January 31st re increased monthly requirements we now request that you submit detailed list of complete facilities of both plant and machine equipment covering tentative list submitted which you consider necessary to meet our program. Request this list be prepared at once and in our possession prior to February 19th to insure inclusion in final negotiations. Show make

type size of machines and what parts machines will be used to produce. Submit also list of special jigs fixtures etc if required to produce parts and descriptive list of anticipated plant expansion and alterations required if firm prices each item not available. Give closest estimated cost but in no case shoul- list be held up on this account.

Ranger Aircraft Engines, E. Koster. 912P

[fol. 377] "EXHIBIT R-10"

February 14, 1942.

Ranger Aircraft Engines, Farmingdale, L. I., New York.
Attn: Mr. E. Koster.
Gentlemen:

In accordance with your telegrams of January 31st and February 13, 1942, we submit the following list of machinery which we believe will enable us to step up our production to meet your requirements for 400 engines per month, starting July 1, 1942.

Item No.		*Estimate*
1	3—#4 Warner & Swasey Turret Lathes with Equipment. For parts 5062, 5321, 5830, 6571, 6624 7762, 7812, 7814, 7822, 7824, 7825, 7826, 7827, 7975, 8123, 8124, 8380, 8381.	$19,107.00
2	3—#2 B. & S. Universal Grinders with #350 Spring Chuck & Collets. (May substitute 2 #C 10x24 Landis) Universal Grinders, $7500.00 Same parts as item #1. 5062, 5157, 5321, 6571, 6624, 7812, 7814, 7822, 7824, 7825, 7826, 7827, 7975, 8123, 8124, 8380, 8381.	10,510.00
3	2—#81 Heald Sizematic with Spring loaded sliding jaw chuck and equipment. For parts 5062, 5068, 5069, 5321, 7674, 7762, 7812, 7814, 7822, 7827, 7975, 8123, 8124, 8380, 8381.	19,650.00

[fol. 378]

Item No.		*Estimate*
4	1—#2B B.&S. Surface Grinder with magnetic Chuck. For parts 5026, 5027, 5321, 6571, 6624, 7419, 7975, 8123, 8380, 8381.	$1,190.00
5	2—#1 B. & S. Universal Grinder & Equipment. For parts 5026, 5027, 5068, 5069, 5157, 5312, 6571, 6624, 6721, 7467, 7674, 7762, 8124.	7,115.00
6	1—#25A Heald Surface Grinder with Equipment. For parts 5068, 5069, 5321, 5830, 7095, 7101, 7102, 7104, 7674, 7812, 7814, 7822, 7824, 7825, 7826, 7975, 8123, 8301, 8625, 8380, 8381.	7,300.00
7	1—#2 B. & S. Vertical Mill, light type with #9 B.&S. taper in spindle. For part 7814, three operations on 8124.	4,180.00
8	1—Van Norman Hand Mill, Reversing mechanism with coolant tank and motor. For parts 5157, 5158, 7419, 7467, 7826, 7827.	1,827.00
9	1—#1 Sundstrand Automatic Production Mill with Automatic spindle stop. For parts 5312, 6689, 7477, 7826.	3,862.00
10	1—Hardinge Second Operation Machine, Collets three and four jaw chucks, tailstock. For parts 6424, 6687, 6689, 7419, 7467 7477, 7673, 7824, 7825.	1,667.90
11	1—Lees-Bradner Thread Mill with Equipment. 6571, 6624, 6687, 7826, 7827, 7477.	7,000.00

[fol. 379]

12	Heat Treating Equipment. L. & N. Carb. Furnace " " work baskets " " " trays	

Item No.		*Estimate*
	Slow cooling unit	
	Temperature control & recorder	
	Tempering Furnace	
	" " baskets	
	" " relay	
	" " Controller	
	" " Panel	
	Hardening Furnace	
	" Controller	
	Cracking Controller	
Lindberg:	Pot Furnace	
	Extra Pot	
B. & C.	Oil Cooler	
Y. & T.	Hoist	
Com'l.	2 Quench Tanks	18,000.00
	Total	$101,408.90

To step up production to 875 per month by January 1, 1943.

Item		
13	3—#4 Warner & Swasey Turret Lathes with Equipment.	16,915.00
14	2—#7125 Fellows Gear Shapers	9,500.00
		$26,415.00

Very truly yours, Aircraft & Diesel Equipment Corporation, B. Ch. Kelleher, President.

BChK:R

[fol. 380] "EXHIBIT R-11"

March 17, 1942.

Ranger Aircraft Engines, Farmingdale, L. I., New York.
Attn: Mr. E. Koster, Director of Purchases.

Gentlemen:

In accordance with your telegraphic request of March 16, 1942, we are enclosing herewith operation sheets on all of the parts that we are making for you, and for which additional facilities are required in order to increase the pro-

duction to meet your requirements for these parts. Our letter to you of February 14, 1942 included a list of the machinery which was submitted in accordance with your telegram of January 31, 1942, and February 13, 1942.

Very truly yours, Aircraft & Diesel Equipment Corporation, B. Ch. Kelleher, President.

BehK:R
Encl.

[fol. 381] "EXHIBIT R-12"

March 20, 1942.

Ranger Aircraft Engines, Farmingdale, L. I., New York.
Attn: Mr. E. Koster.

Gentlemen:

In accordance with your telephone request of this morning, I am enclosing herewith two sets of the machinery specifications for the first step-up to 400 engines per month. I have not included the machines for the second step-up to 875 engines.

Our Production Department has gone over these quite carefully and I think the standard machinery and also the special equipment is all detailed the way I think you want it.

Very truly yours, Aircraft & Diesel Equipment Corporation, B. Ch. Kelleher, President.

BehK:R

[fol. 382] February 14, 1942.

Ranger Aircraft Engines, Farmingdale, L. I., New York.
Attn: Mr. E. Koster.

Gentlemen:

In accordance with your telegrams of January 31st and February 13, 1942, we submit the following list of machinery which we believe will enable us to step up our production to meet your requirements for 400 engines per month, starting July 1, 1942.

Item No.		*Estimate*
1	3—#4 Warner & Swasey Turret Lathes with Equipment. For parts 5062, 5321, 5830, 6571, 6624	$19,107.00

Item No.		Estimate
	7762, 7812, 7814, 7822, 7824, 7825, 7826, 7827, 7975, 8123, 8124, 8380, 8381.	
2	3—#2 B. & S. Universal Grinders with #350 Spring Chuck & Collets. (May substitute 2 #C 10x24 Landis) Universal Grinders, $7500.00 Same parts as item #1. 5062, 5157, 5321, 6571, 6624, 7812, 7814, 7822, 7824, 7825, 7826, 7827, 7975, 8123, 8124, 8380, 8381.	10,510.00
3	2—#81 Heald Sizematic with Spring loaded sliding jaw chuck and equipment. For parts 5062, 5068, 5069, 5321, 7674, 7762, 7812, 7814, 7822, 7827, 7975, 8123, 8124, 8380, 8381.	19,650.00

[fol. 383]

4	1—#2B B.&S. Surface Grinder with magnetic Chuck. For parts 5026, 5027, 5321, 6571, 6624, 7419, 7975, 8123, 8380, 8381.	$1,190.00
5	2—#1 B. & S. Universal Grinder & Equipment. For parts 5026, 5027, 5068, 5069, 5157, 5312, 6571, 6624, 6721, 7467, 7674, 7762, 8124.	7,115.00
6	1—#25A Heald Surface Grinder with Equipment. For parts 5068, 5069, 5321, 5830, 7095, 7101, 7102, 7104, 7674, 7812, 7814, 7822, 7824, 7825, 7826, 7975, 8123, 8301, 8625, 8380, 8[redacted]	7,300.00
7	1—#2 B. & [redacted] Vertical Mill, light type with #9 B.&S. taper in spindle. For part 7814, three operations on 8124.	4,180.00
8	1—Van Norman Hand Mill, Reversing mechanism with coolant tank and motor. For parts 5157, 5158, 7419, 7467, 7826, 7827.	1,827.00

Item No.		*Estimate*
9	1—#1 Sundstrand Automatic Production Mill with Automatic spindle stop. For parts 5312, 6689, 7477, 7826.	3,862.00
10	1—Hardinge Second Operation Machine, Collets three and four jaw chucks, tailstock. For parts 6424, 6687, 6689, 7419, 7467, 7477, 7673, 7824, 7825.	1,667.90
11	1—Lees-Bradner Thread Mill with Equipment. 6571, 6624, 6687, 7826, 7827, 7477.	7,000.00

[fol. 384]

12	Heat Treating Equipment.	
	L. & N. Carb. Furnace	
	" " work baskets	
	" " " trays	
	Slow cooling unit	
	Temperature control & recorder	
	Tempering Furnace	
	" " baskets	
	" " relay	
	" " Controller	
	" " Panel	
	Hardening Furnace	
	" Controller	
	Cracking Controller	
Lindberg:	Pot Furnace	
	Extra Pot	
B. & C.	Oil Cooler	
Y. & T.	Hoist	
Com'l.	2 Quench Tanks	18,000.00
	Total	$101,408.90

To step up production to 875 per month by January 1, 1943.

Item		
13	3—#4 Warner & Swasey Turret Lathes with Equipment.	16,915.00
14	2—#7125 Fellows Gear Shapers	9,500.00
		$26,415.00

Very truly yours, Aircraft & Diesel Equipment Corporation, B. Ch. Kelleher, President.

[fol. 385] "EXHIBIT R-13"

March 27, 1942.

Ranger Aircraft Engines, Farmingdale, L. I., New York.
Attn: Mr. E. Koster.

Gentlemen:

Confirming our telephone conversation of this afternoon, and supplementing our letter of March 20th, we submit the attached list of the additional machines required for the second step-up to 875 engines per month.

Very truly yours, Aircraft & Diesel Equipment Corporation, B. Ch. Kelleher, President.

BchK:R
Encl.

[fol. 386] Warner & Swasey

	Estimate Each
Two (2) N 1372 Single Cutter Turners ¼" to 1" Capacity	85.00
One (1) N 1374 Single Cutter Turners 7/16" to 2" capacity	115.00
One (1) N 1924 Combination end fuser & Turner 3/16" to 2" Capacity	75.00
One (1) H. & O. #102 DMS Die heads with 4 sets of chaser carriers 0" to 1¼" Capacity with each head	150.00
Two (2) H. & O. #103 DMS Die heads with 5 sets of chaser carriers. 0" to 1½" inclusive with each head	150.00
One (1) N 614 Center Drilling Tool	77.00
Three (3) N 1722 Adjustable Tool Holder	18.00
One (1) N 254 Clutch Tap and Die Holder	35.00
Three (3) N 857 Combination stock stop and starting drill	15.00
One (1) Three Jaw Universal Heavy Duty Cushman Chuck #235-B with reversible top jaws	250.00
One (1) N 680 Slide Tool	85.00
One (1) N 1764 Angular Cutter stub boring bars	15.00

	Estimate Each
Three (3) N 613 Drill Chucks	22.00
Four (4) N 949 Drill Sockets #1-2-3-4 H.T.	4.50
Nine (9) N 1887 Short Flanged Tool Holders	12.00
Three (3) N 1888 Long Flanged Tool Holder	15.00
Six (6) N 874 Starting Drills	10.00
One (1) N 1660 Solid type face plates 12" Dia.	39.00
Three (3) 3¾" - 7½ H.P. 1800/900 RPM, 220 Volts, 3 Phase, 60 cycle, 40 Ball bearing motor with magnetic starter	234.00

[fol. 386-A] Warner & Swasey

Three (3) No. 4 Universal Turret Lathes, N-1420—with 18⅛" Swing and 2" x 12" Bar Capacity,
Preselective All Geared Head having 12 spindle speeds forward and reverse,
All Head Gears hardened steel having ground teeth,
Multiple Disc Clutch for forward and reverse speeds,
Head Brake hydraulically operated,
Filtered Force Feed Head Stock Lubrication from Independent oil reservoir in pan,
Flanged Type Spindle Nose,
Spindle Mounted on precision roller bearings,
Hardened and Ground Multiple Splined Sliding Gear Head Shafts mounted on roller bearings,
Collet Chuck, including Master Collet,
Ratchet Type Bar Feed with Protected Bar Support,
Universal Carriage having six Reversible Geared Power Cross and Longitudinal Feeds,
Quick indexing Square Turret,
Hexagon Turret provided with independent Adjustable stops and Automatic Circumference Binder,
Turret Center Mounted on precision roller bearing,
Turret Ram Slides on replaceable, hardened and ground steel piston in the saddle,
Taper Take-up Gibs beneath saddle top caps,
Geared Power Feed to Turret, having six feeds,
Hardened and Ground Steel Channel Way Strip on Front and Flat Strip on rear way,

Oil Pan, Pump and Piping,
Wrenches, etc.
Pedestal Leg Motor Drive with Vee Belts and Pulleys and including push button station.
Price of one machine as described above....$4,815.00 Approx.

[fol. 387] Fellows Gear Shaper Company

Springfield, Vermont

Two (2) #7125-A Type Fellows Gear Shapers, Same as Series #19016 and 19017, Plus 2 sets Raising Blocks for the 7826 Gear.

[fol. 388] "EXHIBIT R-14"

Renegotiation. If this order is subject to the provisions of Title IV of the Sixth Supplemental National Defense Appropriation Act, 1942, the following provisions shall be applicable:

(1) Upon the written request of the Secretary of the Navy, at such period or periods when in the Judgment of the Secretary of the Navy the profits accruing to Vendor under this order can be determined with reasonable certainty, the purchase prices shall be renegotiated by the Secretary of the Navy and Vendor to eliminate therefrom such amount as is found as a result of such renegotiation to represent excessive profits.

(2) There shall be retained by Buyer for the account of the Government or paid to the Government by Vendor at the direction of the Secretary of the Navy any amount of the purchase prices found as a result of such renegotiation to represent excessive profits to Vendor.

(3) Buyer is hereby relieved from any liability to Vendor on account of any amount retained or repaid pursuant to paragraph (2):

[fol. 389] "EXHIBIT R-15"

Analysis of Ranger's Sales for the Fiscal Year Ending November 30, 1942

Shipments made *prior* to 4/28/42 on orders dated prior to 4/28/42	$180,918.08
Shipments made *prior* to 4/28/42 on orders dated prior to 4/28/42 and known to be Lend-Lease	9,780.39
Shipments made *after* 4/28/42 on orders dated prior to 4/28/42	554,[illegible]98.39
Shipments made *after* 4/28/42 on orders dated after 4/28/42	40,205.75
Shipments made *after* 4/28/42 on orders dated prior to 4/28/42 and known to be Lend-Lease	56,604.31
Shipments made *after* 4/28/42 on orders dated after 4/28/42 and known to be Lend-Lease	36,844.77

[fol. 390] "EXHIBIT R-16"

Analysis of Ranger's Sales for the Fiscal Year Ending November 30, 1943

Shipments made on orders dated *prior* to 4/28/42	$107,910.29
Shipments made on orders dated *prior* to 4/28/42 and known to be Lend-Lease	3,862.55
Shipments made on orders dated *after* 4/28/42 including Lend-Lease	1,087,218.56
Shipments made on orders dated *after* 4/28/42 and known to be Lend-Lease	206,219.54

Ranger Motor Div

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

SHIPMENTS for year ended Nov. 30, 1944

SHIPMENTS for year ended Nov. 30, 1943.

PART NUMBER	TOTAL																			
5076	16,421.97	318.78			1,765.60	607.85					1,890.518	15.26			3,106.789			4,730.75		
5077	12,676.28	76.28			918.85	606.80	1,019.57				1,890.30				4,815.51	1,576.10		6,391.63		
5076	48,756.60	4,737.28			18,181.70						4,918.68	56.70			20,143.60			25,118.60		
5078 - 9766	7,507.45	54.20			3,853.45						4,008.65	100.00			10,588.95			11,589.35		
5869	15,736.60	3,013.67			7,739.75						5,765.78	159.60			10,549.15			17,174.75		
5967 - 9769	8,742.61				589.85						589.85	12.00			11,317.50			12,599.50		
5158	18,320.17	139.01			195.09			116.70			1,989.10				4,859.17			4,859.17		
5314	5,614.56	550.80		1,057.70	1,725.45			1,951.30		377.70	6,004.25				11,944.17			11,944.17		
5341	90,044.47	7,977.86			20,107.70						3,338.06	1,090.50			48,184.00			58,890.50		
5830				3,013.80			1,537.80			1,029.15	8,679.99						2,760.51	2,760.51		
6477	5,394.47	68.08		100.00	3,504.70	660.00					5,846.50	577.50			9,630.47		7,200.00	17,407.97		
6571	96,944.50	61,705.00			16,169.00			1,187.50			4,949.00				49,094.00			49,094.00		
6577	8,645.00	1,334.50			1,891.75			19.00			4,171.70				4,831.50			4,831.50		
6687	75,744.00	44,788.47			9,399.33	7,584.85					21,919.12	731.46	1,893.07		28,178.30	7,200.00		38,771.75		
6777	3,495.87				1,171.26	81.00					1,988.12									
6747	940.00			1,034.00		182.70					1,180.70			847.03				4,458.08		
6789	1,161.77				151.96						1,151.96				4,796.00			4,796.00		
7095	1,145.83	1,145.83			707.00						1,852.83				4,759.78			4,759.78		
7104	4,841.11	230.00		37.00	446.00	187.00				4.00	1,814.00	148.00			3,607.87	700.00		4,755.87		
7104	4,896.79			381.85	1,026.29	365.71					1,273.86	6.00	18.00		5,178.78	3,451.00		8,578.78		
7437	40,043.70	17,744.31		1,881.44	16,280.00	9,424.46		15.50		1,713.83	45,305.91				63,059.96	46,049.34		109,137.30		
7414	1,165.00					1,034.63				854.15	1,888.78						4,990.84	4,990.84		
7744	3,495.36				3,515.43			345.00			3,860.43				7,810.11			7,810.11		
7773	940.00			900.00		1,050.00					1,950.00									
7773	1,387.79				581.79						581.79	791.00			1,791.00			2,582.00		
7794	43,336.63	2,884.00			6,688.00			1,277.00			10,849.63				37,453.63			37,453.63		
7944	1,833.19	1,833.19			1,070.67						2,903.86				7,530.00			7,530.00		
7184	10,552.50	2,878.30			3,678.20						6,556.50				4,488.50			4,488.50		
7184	3,267.10	3,267.10			3,988.41						7,255.51				4,000.95			4,000.95		
7182	18,470.14	18,470.14			6,782.00						25,252.14				6,793.67			6,793.67		
7182	23,873.19	23,873.19			3,358.49						27,231.68				10,795.22			10,795.22		
7845	11,369.11	11,369.11			2,673.49			10,110.00			24,152.60				9,136.40			9,136.40		
7846	73,838.77	73,838.77			3,485.77						77,324.54				23,993.05			23,993.05		
7847	24,587.91	24,587.91			3,878.38						28,466.29				7,979.80			7,979.80		
7966	94,427.61	94,427.61			8,791.01			696.00			103,914.62				24,824.36			24,824.36		
7943	91,685.81	91,685.81			3,964.38						95,650.19				19,116.36			19,116.36		
7944	33,080.96	33,080.96			1,497.42			1,497.42			36,075.80				8,058.84			8,058.84		
8301	6,505.19	6,505.19		91.69	1,833.30		797.00			1,330.00	10,557.18				6,792.47	779.00		7,571.47		
8380	3,185.00	3,185.00			1,067.49						4,252.49				3,908.41			3,908.41		
8381	7,645.36	7,645.36			1,067.49						8,712.85				3,908.41			3,908.41		
5798	1,527.00			91.68		1,618.68					1,710.68									
	1,126,816.81	379,165.81		11,179.68	268,619.25	61,161.73	3,353.57	16,437.18		5,277.96	1,126,816.81	3,191.94	1,911.77	847.03	1,126,816.81	79,979.84	4,990.84	1,126,816.81		

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

PAGE V

PART NUMBER	Total Shipments	Shipments for year ended Nov. 30, 1947							Shipments for year ended Nov. 30, 1948					
		Gross Price to Dealer		Gross Price to Dealer		Gross Price to Dealer			Gross Price to Dealer		Gross Price to Dealer			
		Regular	Long Legs	Regular	Long Legs	Regular	Long Legs	Total	Regular	Long Legs	Regular	Long Legs	Total	
Previous Brought Forward	289,384.39	180,918.05	9,856.19	55,898.39	56,371.21	20,805.75	8,849.76	85,899.76	107,910.09	3,867.55	10,805.85	99,361.15	174,197.84	
8.5L												2,427.00	2,427.00	
87.9												4,030.95	4,030.95	
89.9												53,270.65	53,270.65	
6695												5,613.50	5,613.50	
790Y												2,358.75	2,358.75	
793												7,178.60	7,178.60	
7109												5,960.96	5,960.96	
317												16.70	16.70	
396970												48.00	48.00	
396967												27.00	27.00	
396910												58.80	58.80	
396900												36.75	36.75	
7489												13,397.75	13,397.75	
5367	95.47													
535	40.00													
5775														
7101														
	289,519.86	180,918.05	9,856.19	55,898.39	56,371.21	20,805.75	8,849.76	85,899.76	107,910.09	3,867.55	10,805.85	99,361.15	174,197.84	

Ranger

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

1942 SHIPMENTS 1/1/42 to 11/30/42 — SHIPPED & ALL SHIPPED

1943 SHIPMENTS

P.I.C.T.	P.O. No.	DATE	to 11/30/41	12/1/41 to 4/28/42	4/29/42 to 12/31/42	YEAR 1942	1/1/43 to 11/30/43	PRIOR TO 4/29/42	PRIOR TO 4/1/42	ON H. PRIOR TO 4/1/42	RETURNED AFTER 4/1/42	LEND LEASE	ON H. PRIOR TO 4/1/42	RETURNED AFTER 4/1/42	LEND LEASE
5026	11434	10-11-39	42588												
	14983	7-19-40	57500												
	16355	10-9-40	412500												
	17550	12-3-40	231000												
	20413	4-9-41	474567												
	22201	9-4-41	121440	31878	228525	260403	0	31878		228525					
	24539	9-29-41	35475		35475	35475				35475					
— N	26241	2-28-42			511500	511500				511500					
LL N	27868	12-31-41			306900	306900						306900			
— N	33071	4-28-42			476160	476160	1536236			476160			1536236		
LL N	33264	4-28-42			300080	300080						300080			
— N	40634	8-14-42					3106789						3106789		
	70294		1341177	31178	1858610	1890118		31178		1716610		6 180			
5027	11433	10-11-39	41888												
	14984	7-19-40	57500												
	16355	10-9-40	470222												
	17559	12-3-40	231000												
	20413	4-9-41	401214												
	22201	9-4-41		180477	306478	417450		180972		236478					
	24540	9-29-41	39078	81906		81906		81906							
— N	26248	2-28-42			682007	682007				682007					
LL N	27869	12-31-41			306900	306900						306900			
LL N	33263	4-28-42			300080	300080						300080			
— N	40636	8-13-42			1019459	1019459	2987541				1019459		2987541		
LL N	47598	12-9-42					1576102							1576102	
	70273		1467418	1111975	1211720	1190210	4558643	1811720		1211720	1 151	6 180			
5062	12201	10-20-39	57200												
	15643	9-5-40	73480												
	17569	12-2-40	351780	93468	39360	487068		93468		39360					
— N	23803	8-25-41		464400	129600	594000		464400		129600					
	24642	9-26-41			288900	288900				288900					
— N	29479	2-5-42			769500	769500				769500					
— N	30850	3-25-42			590760	590760	567000			590760			567000		
— N	36951	6-4-42					2437560						2437560		
— A	53774	3-9-43					1576800						1576800		
	67038		1987460	1811720	1811720	1811720	5781963	1811720		1411720			2004180		
								7685504		3498265	1019459	1713960	2103234	10403690	1576102

Ranger

...NEL & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

				1942	1943	YEAR 1942		1942 SHIPMENTS			1943 SHIPMENTS			
				To 11/30/41	1/1/42 to 4/8/42	4/9/42 to 11/30/42								
5068-9662	12493	10-20-39	38750											
	15236	9-5-40	27720											
	17354	11-25-40	48145											
	20731	4-21-41	33775											
	23590	8-18-41	96250											
— N	23963	9-4-41	155375	54250	1225	55475		54250	1225					
	24541	9-29-41	351400	201250		201250		201250						
— N	29509	2-5-42		20615	224750	245365		20615	224750					
— N	33154	4-13-42			159340	159340	100440		159340		100440			
— N	34905	5-21-42					62000					62000		
— N	36354	6-17-42					54095					54095		44640
— A	53667	8-26-43					44640							9145
— A	66184	9-21-43					9145							
	67018													
			1207345	1257140	385315	440053	1158935	654140	385315		100440	62095		453785
√069	12187	10-27-39	348870											
	15234	4-5-40	26250											
	17354	11-25-40	51700											
	20732	4-21-41	41360											
	23588	8-18-41	193400											
	24896	9-3-41	17296	211934		211934		211934						
	24942	9-29-41	377504	376		376		376						
— N	29475	2-5-42		89745	142755	232500		89745	142755					
— N	33155	4-3-42			81220	81220	159960		102218		159960			
— N	34906	5-11-42					62000					62000		
— N	36358	6-4-42					54250					54250		
— N	46921	11-27-42					15500					15500		
— A	52222	2-27-43					29340							29340
	67339													
			1254534	301303	584285	885588	570140	301303	544218		159960	139590		58680
6996-4-1-5	15590	8-31-40	28500											
	17563	12-3-40	113022											
	20733	4-21-41	84040											
	24543	9-29-41	28848											
— N	24744	9-29-41	301769											
— N	29618	2-9-42			22035	22035			22035					
— N	33443	4-17-42			366996	951796	128100		366996		128100			
— N	40723	8-15-42					95655					95655		
— A	52470	3-19-43					68277							68277
	67010						291681		389031		128100	95655		68277
							1158935		1044981		288060	234945		581785

ENGINEERING & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Diesel

					1942 to 11/30/41	1942 12/1/41 to 4/14/42	1942 4/15/42 to 4/30/42	1942 YEAR 1942	1943	SHIPPED AREA TO 4/14/42	SHIPPED AREA TO 4/30/42	1942 ON S.O. RECEIVED PRIOR TO 4/14/42	1942 ON S.O. RECEIVED AFTER 4/14/42	1942 LEND LEASE	1943 SHIPPED ON S.O. RECEIVED PRIOR TO 4/14/42	1943 SHIPPED ON S.O. RECEIVED AFTER 4/14/42	1943 LEND LEASE	
5158	11394	10-7-39	10710															
	14969	7-19-40	13600															
	17760	12-3-40	18700															
	20734	4-21-41	24508															
	23136	7-25-41	27968	2765		2765		2765										
	24444	9-29-41	8778	3730		3730		3730										
— N	24725	9-29-41	16933	10799		10799		10799										
— N	29501	2-6-42		8137	13509	9546		8137				13509						
— N	35571	5-19-42			46170	46170			107673				46170			107673		
— N	40430	8-13-42							273600							273600		
— A	54696	3-19-43							54639									54639
	64041																	
	67041																	
			118340	139431	59679	198911		485911	139431			13509	46170			381273		54639
5312	11316	10-7-39	16100															
	15792	8-31-40	34850															
	16951	10-9-40	37750															
	17557	12-3-40	81050															
	20941	4-28-41	115252															
	24117	9-9-41	176416															
	24525	9-29-41	100038															
LL N	32417	12-31-41		10570	42840	53410		10570	105570			46925		42840				
— N	33019	2-7-42		50080	42595	92675		50080										
LL N	33970	4-13-42			41800	41800								41800				
— N	40523	8-13-42				195130			488870				195130			488870		
— A	54697	3-19-43							703347									703347
			361450	60250	339335	600115		1171700	1192217	55080	105570	969525	241328	84640		488870		703347
5321	12053	10-23-39	171000															
	15342	9-5-40	149330															
	17510	12-3-40	648099	55186	94220	149406				55186		94220						
	23804	8-25-41		17660	52145	134050				67260		52145						
— N	24576	9-27-41			38000	38000						38000						
— N	29504	2-6-42			131765	131765						131765						
— N	21945	3-25-42			65740	65740			107065			65740				107065		
— N	36352	6-4-42							352830							352830		
— A	54698	3-19-43							129010									129010
	67340																	
			820448	78186	705385	1052515		1857900	1588097	122266	105570	301070	241328	84640		1070652		832357

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Ranger

			1942 to 11/30/41	1942 to 11/30/42	YEAR 1942	1943	1942 SHIPMENTS from Dealers	1942 SHIPMENTS to Dealers	1942 SHIPMENTS Agency to Dealers	1942 SHIPMENTS Agency Lease	1942 SHIPMENTS Lease	1943 SHIPMENTS Agency to Dealers	1943 SHIPMENTS Agency Lease	1943 SHIPMENTS Lease	
5830LLN	29947	2-2-42		302304	302304			302304							
LL N	33439	4-17-42		153780	153780						153780				
LL N	37931	7-2-42		408915	408915	75651					408915			75651	
	6519														
				302304	462695	75651		302304			562695			75651	
6472	11388	10-7-39	19212												
	14867	7-19-40	20800												
	16352	10-9-40	94920												
	17526	12-3-40	55370												
	20402	4-9-41	95715												
	23987	9-3-41	108327												
	24526	9-29-41	145307												
LL N	27707	12-29-41		100000	66000	166000		100000			66000				
— N	29502	2-6-42		68080	749720	1430000	68080		749720						
— N	33441	4-17-42			275550	275550	57750		275550			59250			
LL N	33935	4-29-42					72000							72000	
— N	40838	8-18-42					400000						400000		
— A	40793	3-8-43					530644								530644
			95447	168080	416647	1925550	1078444		1025270		627695	59250	400000	72000	530644
6571	62185	10-20-39	118550												
	15634	9-5-40	123750												
	17856	11-25-40	117000												
	20431	4-10-41	222750												
— — N	22640	7-8-41		523450	4775	523925		523450	4775						
	23523	8-15-41	14715	75600	37875	732250		75600	37875						
	25473	9-29-41	210300	18000		18000		18000							
— N	28211	2-5-42			844550	844550			844550						
— N	33264	4-14-42			2574	2574			2574						
— N	33307	9-30-42			11875	11875	131750			11875			131750		
— A	34719	3-19-43					117500								117500
	66811														
			969450	617050	1649775	3858425	2090094	617050	1467900	11875			1315750		1175500
								2731774	4128744	10433034	3555948	8151838	3620136	1813483	2409653

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Ranger

				To 11/30/41	12/1/41 to 4/1/42	4/2/42 to 11/30/42	Year 1942	1943	SHIPMENTS 1/1/41 to 11/30/42	LESS SHIPMENTS Prior to 1/1/41	1942 SHIPMENTS 1/1/41 to 11/30/42	AFTER 11/30/42	LESS LEASE	1943 SHIPMENTS Prior to 1/1/43	1943 SHIPMENTS 1/1/43 to 11/30/43	LESS LEASE	
6611	12189	10-20-39	118500														
	15633	9-5-40	92250														
	17357	11-25-40	117000														
	20424	4-10-41	222750														
— N	22110	8-25-41		526775	23275	550050			526775		23275						
— N	23524	8-25-41	72000	157950		157950			157950								
	24542	9-29-41	19395	48975		48975			48975								
— N	30442	2-5-42			898275	898275					898275						
— N	33765	4-14-42			947625	947625					947625						
— N	34356	6-4-42			19000	19000	1644400					19000			1644400		
— A	53827	8-9-43					87875										87875
	66758																
			811466	703660	1888175	2591835	5943750	703660		1869150	190				1644400		
6687	11389	10-6-39	36090														
	15581	2-18-40	247500														
	16354	10-9-40	179000														
	20841	4-24-41	80600														
	24129	9-9-41	222375	393200	258	393458			393200		258						
	24549	9-29-41	187055	132460		132460			132460								
— N	29606	2-9-42		112840	833105	945945			112840		833105						
LL N	32868	4-7-42			758485	758485	289304				758485					289304	
— N	33769	4-23-42			106470	106470	731261				106470			731261			
LL N	36991	6-15-42					720000									720000	
— N	40579	8-18-42					1312500								1312500		
T A	54693	8-29-43					769230										769230
	67703																
			715944	445840	1698118	2143958	2811730	446840	3958318	4178184	1335970	3741184	43513397	21111183	43513397	1009284	769230
6689	11390	10-7-39	10000														
	15762	9-21-40	12840														
	16300	10-9-40	85500														
	17558	12-3-40	49700														
	20735	4-21-41	20470														
	22111	9-9-41	91022														
	23138	7-25-41	39050														
	24550	9-29-41	71000														
— N	26246	2-12-42			147196	147196					147196						
LL N	27864	12-31-41			44080	44080							44080				
LL N	33436	4-17-42			37626	37626							37626				
			1185911		1885814								81706				

Ranger

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

1942 SHIFTS 4/1/42 to 11/30/42

1943 SHIPMENTS OR SIDE RECEIVED

			11/30/41	4/1/42 to 11/30/42	YEAR 1942	1943								
6711	17673	12-6-40	94000											
LL N	27861	12-31-41		103400	94000	197800		103400			0 94000			
LL N	33437	4-17-42			52647	52647	86743				0 52647	0 86743		
LL N	37348	6-30-42					410780					0 410780		
LL N	47515	12-9-42					60536					0 60536		
LL A	52010	2-16-43					53392					11 53392		
— A	69003	10-28-43					46995							46995
			94000	103400	146647	1180647	657446	103400			146647		611451	46995
6789	12668	11-22-39	9200											
	15593	8-31-40	11441											
	17565	12-3-40	22990											
	23137	7-25-41	23478											
	24476	9-9-41	13993											
	24551	9-29-41	20975											
— N	29511	2-6-42			47300	47300			47300					
— N	33404	4-17-42			104662	104662			104662					
— N	40424	8-13-42					187566					187566		
— A	54694	3-19-43					219868							219868
— N	66731	8-27-43					121188							121188
			141391		196154	196154	1196154		196154			187566		341056
7095	11391	1-7-39	6000											
	14965	7-19-40	9200											
	16356	10-9-40	47500											
	17554	12-3-40	26145											
	20432	9-10-41	37335											
	24128	9-9-41	34913	18810		18810		18810						
	24552	9-29-41	61750	6175		6175		6175						
— N	29752	2-12-42			29700	29700			29700					
— N	33868	4-25-42			61020	61020			61020					
— N	47280	12-4-42					203004					203004		
— A	53159	3-2-43					57814							57814
— A	61796	7-14-43					15110							15110
	66429		214391	18810	90820	1109610	1814954	18810	90820			203004		72924
								398330	516274	1360890	3741	2373329	435139	2150175

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Ranger — 1942

				to 11/30/41	12/1/41 to 4/15/42	4/16/42 to 11/30/42	YEAR 1942	1943	1942 Shipments Period to 4/15/42 Ship.	1942 Shipments Period to 4/15/42 Rec'd	1942 Shipments Period to 4/16/42 Ship.	1942 Shipments After 4/16/42 Ship.	1942 Shipments Lend Lease	1943 Shipments Period to 4/15/42 Ship.	1943 Shipments After 4/16/42 Ship.	1943 Shipments Lend Lease	
7102	11391	10-11-39		6400													
	14965	7-22-40		10400													
	16356	10-9-40		5300													
	17554	12-8-40		2746													
	20432	4-10-41		2275													
	24130	9-9-41		5658													
	24553	9-29-41		7293													
LL	N 27865	12-31-41			37400		37400			37400							
—	N 29758	2-12-42			23000	1200	24200		23000		17000						
LL	A 33866	4-25-42				18700	18700						18700				
—	N 33867	4-25-42				4500	4500	14800			4500				14800		
LL	N 37933	7-2-42				2920	2920	220400					2920			220400	
—	N 47314	12-5-42						200180							200180		
—	A 53247	3-1-43						100948									100948
—	A 61605	7-14-43						39657									39657
	65461			9711	50	1980	11740	377598	230	316	4670		4670	1470	200180	220400	140607
	66618																
	69017																
7104	11391	10-11-39		7326													
	14965	7-22-40		12000													
	16356	10-9-40		5300													
	17554	12-8-40		2915													
	20432	4-10-41		2947													
	24131	9-9-41		6635													
	24554	9-29-41		6890													
LL	N 27864	12-31-41			38135	2465	40600			38135			2465				
—	N 29759	2-12-42				33031	33031				33031						
LL	N 33784	4-28-42				34056	34056	10208					34056			10208	
—	N 33869	4-25-42				6958	6958	6907			6958				6907		
LL	N 37929	7-2-42						325148								325148	
—	N 47281	12-4-42						196388							196388		
—	A 53213	3-1-43						30547									30547
—	A 61704	7-14-43						13485									13485
	65493																
	66019																
	69441																
				16616	50	1980	11740	1196388	230	38135	10758		37521	1470	196388	325148	140607
									4006303	1918091	13750779	3741362	2924629	4373099	2189812	3256848	1406076

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

				1942 to 11/30/41	1942 11/30/41 to 4/18/42	1942 4/18/42 to 9/30/42	1942	1943	1942 SHIPMENTS PRIOR TO 4/18/42 ON SDJ REC'D	1942 SHIPMENTS 4/18/42 TO 11/30/42 ON SDJ REC'D	1942 PRIOR TO 4/18/42	1942 AFTER 4/18/42	1942 LEND LEASE	1943 PRIOR TO 4/18/42	1943 AFTER 4/18/42	1943 LEND LEASE	
7327	11392	15-7-39		1136.25													
	15591	8-31-40		875.40													
	16853	10-9-40		916.80													
	20405	4-9-41		924.40													
	22141	9-4-41		385.85	4764.31		4764.31			4764.31							
	24555	9-29-41		840.00													
— N	26244	2-5-42				16280.00	16280.00					16280.00					
LL N	29435	2-4-42			2481.22	1786.78	4268.00				2481.22		A 1786.78				
LL N	33438	4-17-42				11397.48	11397.48						A 11397.48				
— N	35336	5-16-42				18.54	18.54	25144.46				18.54			25144.46		
— N	40429	8-13-42						3846.50							3846.50		
LL N	42532	8-13-42				1713.84	1713.84	4573.96					A 1713.84			4573.96	
				4063.40	7025.53	44756.44	51781.97	107323.37	4764.31	4481.66	16280.00	18.54	30980.10		63605.96	4573.96	
7419	17440	11-28-40		1165.00													
LL N	27738	12-29-41				1027.53	1027.53						B 1027.53				
LL N	35305	5-28-42				640.75	640.75						B 640.75				
LL N	37346	6-20-42				186.40	186.40	4990.86					B 186.40			4990.86	
	62548			1165.00		1854.68	1854.68	4990.86					1854.68			4990.86	
	68417																
7467	15589	8-31-40		450.50													
	17524	9-3-40		252.50													
	20942	4-28-41		187.00													
	24127	9-9-41		107.64	305.87	1661.3	2224.70		305.87			1661.3					
	24556	9-30-41		115.25													
— N	29585	2-6-42				3349.50	3349.50					3349.50					
— N	33933	4-20-42				3550.05	3550.05	22.95				3550.05	?	?	22.95		
— N	34907	5-11-42						60.37							60.37		
— N	41151	8-22-42						1079.01							1079.01		
	61390			519.25	305.87	8579.05	8884.92	1162.33	305.87			8579.05			1162.33		
	68394																
									5070.18	4481.66	16280.00	8597.59	30980.10	4396.94	63605.96	9563.92	

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Prior to 1942 — SHIPS 1/1/42 TO 11/30/42 ON 5 D's REC'D — 1943 SHIPS ON 531 REC'D

				11/30/41	Jan 1/41 to 1/1/42	1942 to 11/30/42	1942	1943	SHIPPED Prior to 1/1/42	LL SHIPPED Prior to 1/1/42	Prior to 1/1/42	Apprn 1/1/42	Loss Sale	Prior to 1/1/42	1942 1/1/42	Cross Plate	
7673	17439	11-28-40		94000										43760 94	293 60 92		7 72 85 4
LL N	27263	12-31-41			900 52		900 52			900 52							
LL N	33794	4-20-42				17 50 20	17 50 20						8 17 50 20				
LL N	37347	6-20-42						4 12 2 84								4 12 2 84	
	67502																
				946 -	900 52	17 50 20	17 50 72	4 17 2 84		900 52			7 20 9 52			4 17 84	
7673	11293	10-7-39		10625													
	14002	7-19-40		10000													
	17761	12-3-40		17800													
	20945	4-28-41		30800													
	24552	9-29-41		24500													
— N	24757	10-1-41		48052													
— N	29510	2-6-42			40500		40500		40500								
— N	33766	4-14-42				67185	67185	22815			67185			22815			
— N	36355	6-4-42						166500							166500		
— A	42031	3-11-43						154260									154260
	66812																
				14480	405	67185	107685	343575	405 -		67185			22815	166500		154260
7674	12171	10-20-39		27000													
	15344	9-5-40		29670													
	17358	11-25-40		65780													
	20420	4-10-41		148278													
	23907	9-4-41		29690													
	24558	9-29-41		105754													
— N	26180	11-13-41			99300	2499900	2999200		49300		2999200	463310			201190		
— N	36357	6-4-42				463310	463310	201190							248320		
— N	40824	8-17-42						248320									
— A	47701	3-19-43						327250							208510		327250
	66950			633384	493 -	716410	716510	775760	493		299200 -	463310					327250
7672	21571	12-3-40		183348	469482	13890	455592		469482		13890						
	23506	8-25-41			1089000	968400	945740		1089000		962400						
— N	24654	9-27-41				1809000	1809000				1809000						
— N	29503	2-6-42				255600	255600				255600						
— N	31948	3-25-42				1384500	1384500	1432500			1384500			1432500			
— N	36358	6-4-42						629000							629000		
— A	43968	3-10-43						346200									346200
	67341			1833348	1558482	1078410	4787492	1111858	1558482		670410			14325 -	64910 -		673200
									6336873	929983	23155947	846883	5585249	585140	3622216		11516364
										1199183			A 6659134				

AIRCRAFT & DIESEL EQUIPMENT DIVISION
4401 Ravenswood Avenue
CHICAGO, ILL.

Ranges to 11/30/41

1942 SHIPTS 4/1/42 TO 11/30/42 ON SD's REC'D

1943 SHIPTS ON SD's REC'D

7812	11540	9-5-40	308560																115163.44
	13768	12-3-40	810725																
	23805	8-28-41	357120	1340780		1340780			1340780										
— N	24657	9-24-41		79600	393006	47.2625			79600			393025							
— N	29728	26-4-42			1447800	1447800						1447800							
— N	31843	3-25-42			1035500	1035500	660250					1035500				660250			
— N	34059	6-4-42					3495050										3495050		
— A	58059	8-3-43					1632100												1632100
	67943	C																	
		C	1085595	1340780	3163375	1147155	5787400	1340780			1763375					660250	3495050		1632100
7814	12247	10-20-39	38400																
	13597	3-18-40	78400																
	14623	6-21-40	86175																
	15599	9-[illegible]-40	160850																
	17562	[illegible]-[illegible]-40	310170																
	20404	[illegible]-[illegible]-41	377120																
	24133	9-2-41	952650		667200	667200						667200							
	24559	9-30-41		322490	28665	351145			322490			28665							
— N	29610	2-[illegible]-42			891210	891210	192150					891210				192150			
— N	33770	4-28-42			1015765	1015765	1031085					1015765				1031085			
— N	40628	8-[illegible]-42					3162750										3162750		
— A	55442	8-29-42					2343250												2343250
	66991		1485631	2340780	6784435	5243110	20781930	1340780	322490		1763375	6784435				1883400	6657800		4075350
7822	12495	10-20-39	944100																
	15644	9-[illegible]-40	307690																
	17573	[illegible]-[illegible]-40	1147244																
	23807	8-25-41	157210	1987850	2973360	1035510			798150			2373360							
	24653	9-29-41		1453850	4806540	3760370			1453850			4806540							
— N	29414	2-4-42			1433061	1433061						1433061							
— N	31944	3-25-42			3077798	3777798	1453850					3077798				1453850			
— N	34380	6-5-42					3822485										3822485		
A	53933	8-[illegible]-42					1871188												1871188
	67342		1611941	3441630	12290468	9236980	27481503	1340780	2252340		1763375	12290468				1453850	3822485		1871188
								8890427	9999830	30244958	8421888	64129279	91887246	46702387	9[illegible]4	[illegible]	[illegible]		17362907

Ranger

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

				11/30/41	to 12/31/42	1942	YEAR 1942	YEAR 1943	SHIPPED [illegible]	[illegible]	1944 SHIPTS 4/1/44 to 11/1/44 ON SDs RECD	[illegible]	1945 SHIPTS ON SDs RECD	[illegible]	LEND LEASE	
7824	12182	10-24-39	101600										9187.24	4476.2387		173.2950
	15341	9-5-40	120750													
	17619	12-4-40	68715													
	23808	8-25-41	77910	331785	544575	876360			331785		544575					
	24652	9-27-41		127200	258375	385575			127200		258375					
— N	29506	2-6-42			1093970	1093920					1093970					
— N	31947	3-25-42			145485	145485					145485					
— N	36392	6-5-42			24000 90	24000 90	2283970					24000 90		2283970		
— A	3976	3-9-43					1963650									1963650
	67415	—														
				4987385	4469855	3591110	8059965	4467370	4987385		3351770	24000 90		2283970		1963650
7825	12205	10-20-39	191600													
	15639	9-5-40	27426													
	17574	12-2-40	66736	588353		588353			588353							
	23809	8-25-41		1518340	797440	2315780			1518340		797440					
	24651	9-27-41		427200	404060	831260			427200		404060					
— N	29413	2-4-42			2454360	2454360					2454360					
— N	31946	3-25-42			3070500	3070500					3870500					
— N	36393	6-5-42			1011040	1011040	5285355					1011040		5285355		
— A	3932	3-10-43					218070									218070
	67413	—														
				1133540	7338895	7472400	8611040	1076410	7338895		6797360	1011040		5285355		218070
7826	12207	10-20-39	127600													
	15638	9-5-40	20386													
	17567	12-3-40	44339	488538		488538			488538							
	23864	9-4-41		74140	908520	1622000			74140		908520					
	24650	9-27-41		270000	188300	458300			270000		188300					
— N	29507	2-6-42			2058750	2058750					2058750					
— N	31484	3-16-42			1679400	1679400	845100				1679400		845100			
— N	36394	6-5-42					530965							530965		
— A	3931	3-10-43					218970									218970
	68420															
				1335140	1467855	2802995	1594935		1335140		6092950		845100	530965		218970
									13360840	9018325	6432360	1011040	845100	5816107		2196420

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Ranger to 1942

				4/30/41	4/1/42 to 6/30/42	1942	1943	SHIPMENTS 4/1/41 to 11/30/42 SHIPPED TO 4/1/42	SHIPMENTS 4/1/41 to 11/30/42 LL SHIPPED TO 4/1/42	SHIPMENTS 4/1/41 to 11/30/42 ON S.D. RECEIVED TO 4/1/42	SHIPMENTS 4/1/41 to 11/30/42 NOTES 4/1/42	SHIPMENTS 4/1/41 to 11/30/42 LEND LEASE	SHIPMENTS ON S.D.'s REC'D 4/1/41 TO 4/1/42	SHIPMENTS ON S.D.'s REC'D 4/1/42 TO 11/30/42	SHIPMENTS ON S.D.'s REC'D LEND LEASE	
7827	12210	10-20-39														
	15637	9-5-40														
	17566	12-3-40														
	24083	9-8-41														
	24649	9-26-41														
— N	29412	2-1-42														
— N	31847	8-25-42														
— N	36391	6-5-42														
— A	15226	2-17-43														
	67424															
7975	23043	7-30-41														
— N	25159	10-14-41														
	39805															
— N	42607	9-15-42														
— N	49007	12-30-42														
— A	61060	7-2-43														
— A	65341	9-8-43														
8123	23043	7-30-41														
— N	25176	10-14-41														
	39805															
— N	42607	9-15-42														
— N	49022	12-30-42														
— A	61057	7-2-43														
— A	65310	9-8-43														
	69864															

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

SHIPMENTS 4/1/42 to 11/30/42 ON SDS RECEIVED

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				TO 11/30/41	12/1/41 TO 3/31/42	4/1/42 TO 11/30/42	YEAR 1942	1943	SHIPPED TO 4/1/42	SHIPPED 4/1/42 TO 11/30/42	PRIOR TO 4/1/42	AFTER 4/1/42	LEND LEASE	PRIOR TO 4/1/42	AFTER 4/1/42	LEND LEASE	
									163,240.91	923.83	130,697.71	24,811.40	A 6,579.34	108,114.44	68,329.89		309,318.32
8124	17200	9-3-40	3 09.47														
	17359	11-25-40	372.90														
	18406	4-8-41	65.34														
	24760	9-29-41	93.14	26.40			26.40		26.40								
— N	24778	10-1-41	102.40	86.85			86.85		86.85								
— N	29607	2-9-42			127.66		127.66				127.66						
— N	32514	11-1-42		9.18			9.18			9.18							
— N	33442	4-17-42			193.99		193.99				193.99						
— N	40601	8-13-42			2.27		2.27	214.12				2.27			214.12		
— A	59176	6-2-43						21.43									21.43
	66643																
			33.41	9.63	3.23	1.07	4.30	2.15	9.63		3.31	.33			2.14		2.15
8301	17703	12-4-40	5.83														
	17704	12-6-40	37.10														
	20432	4-10-41	5.83														
	24132	9-9-41		6.52			6.52		6.52								
	24761	9-29-41	7.44	5.62			5.62		5.62								
LL N	27864	12-31-41		16.71	2.23		3.90						B 2.23				
— N	29611	2-9-42		29.40	4.01		6.95		2.94		4.01						
— N	33870	4-25-42			14.32		14.32				14.32						
LL N	33871	4-25-42			2.77		2.77						B 2.77				
LL N	37632	7-2-42			10.44		10.44	2.66					A 10.44			2.66	
— N	47315	12-4-42						4.30							4.30		
— A	53158	8-2-43						44.54									44.54
— N	61606	7-14-43						.40									.40
	64014																
	66620																
	69018																
			1.51	1.67	3.79	1.53	5.33	11.83	1.50	1.67	1.33		1.77		.40	.27	.49
8350	23043	7-30-41	12.20														
	25161	10-14-41		3.17			3.17		3.17								
	39505			29.26	6.59	9.52			2.92		6.59						
					3.36	3.36						3.36					
— N	47607	9-15-42			1.45	1.45		3.42				1.45					
— N	49048	12-30-42						.62							3.42		
— A	61058	7-3-43						3.20							.62		
— A	65311	9-8-43						2.09									3.20
	69798																2.09
			1.22	3.22	1.18	1.90	3.17	1.18	3.17		1.18	.45			.96		.47
									177.38	94.79	42.93	33.21	7.63	1.08	87.99	2.96	34.09
																	15.69

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

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SHIPMENTS 4/1/42 TO 4/30/42 ON SD'S REC'D

SHIPMENTS ON SD'S REC'D

				to 11/30/41	12/1/41 to 4/30/42	11/30/42	12/31/42	1943	SHIPPED PRIOR TO 4/1/42	LL SHIPPED PRIOR TO 4/1/42	SHIPPED TO 4/30/42	SHIPPED 4/1/42 TO 4/30/42	CANCELLED	SHIPPED 4/1/42 TO 4/30/42	SHIPPED ON SD'S REC'D	CANCELLED	
8381	23043	7-30-41	1[illegible]000		8296		8296		1[illegible]3[illegible] 9292		[illegible]		[illegible]	108[illegible]	718 6685		3[illegible]9091
— N	24164	10-14-41		3[illegible]688	52[illegible]00		87758		349680		527900		[illegible]				
	39205				34379 0	34379 0						343790					
— N	42607	9-15-42						39950							39950		
— N	48942	12-30-42						3[illegible]46 50							3[illegible]46 50		
— A	61059	7-3-43						64[illegible]000									64[illegible]000
— A	65293	9-8-43						34[illegible]800									34[illegible]800
	69798																
	37[illegible]09		1[illegible]00	3[illegible]9[illegible]76	8[illegible]1690	1[illegible]9[illegible]66	17030[illegible]	3[illegible]9[illegible]76			5[illegible]7900	343790			7[illegible]4[illegible]00		9[illegible]88[illegible]
8625	21980	6-9-41	47300														
LL N	27801	12-31-41		18920		18920				18920							
LL N	33865	4-25-42			88638	88638							88638				
			47300	18920	177276	107558				18920			88638				
8154 LL N	38893	7-15-42						24[illegible]									24[illegible]
8209 LL N	38889	7-15-42			2[illegible]3[illegible]2	2[illegible]3[illegible]2		5[illegible]0[illegible]					2[illegible]3[illegible]				5[illegible]0[illegible]
8968 LL N	38815	7-14-42				4[illegible]4900		19[illegible]796			4[illegible]4900						19[illegible]796
LL N	38816	7-14-42						11[illegible]0[illegible]2									11[illegible]0[illegible]2
LL A	[illegible]	8-5-43						38[illegible]2[illegible]									38[illegible]2[illegible]
8699 LL N	38712	7-15-42			22[illegible]0[illegible]	2[illegible]42[illegible]		19[illegible]5[illegible]									17[illegible]5[illegible]
LL N	32996	7-15-42			[illegible]	[illegible]		[illegible]					[illegible]				[illegible]
7905 LL N	39555	7-24-42						59[illegible]0[illegible]									59[illegible]0[illegible]
	27159																
	70140																

Ranges

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

SHIPMENTS SHIPPED TO U.S.N. — SHIPMENTS ON S.D. RECEIVED

| | | |

[fol. 408] IN UNITED STATES DISTRICT COURT

[File endorsement omitted]

[Title omitted]

AFFIDAVIT OF B. CH. KELLEHER IN RESPECT OF GENERAL MOTORS CORPORATION (BUICK DIVISION)—Filed July 2, 1945.

B. Ch. Kelleher, being first duly sworn on oath, deposes and says that he is now and has been since June 1940, the President and General Manager of Aircraft & Diesel Equipment Corporation; that this affidavit pertains only to the relations of Aircraft & Diesel Equipment Corporation, (hereinafter called "Plaintiff"), with Buick Motor Division of the General Motors Corporation, (herein called "Buick"), and is one of a series of affidavits made by this affiant pertaining to the contracts of Plaintiff with purchasers of its equipment; that affiant makes this affidavit and makes a part hereof certain exhibits in support of the position of plaintiff that a substantial portion of its sales made in the fiscal years ended November 30, 1942, November 30, 1943, and November 30, 1944, are not subject to renegotiation.

[fol. 409] Affiant further states that:

(1) The photostatic copies of letters and telegrams attached to this affidavit are all true and correct copies of letters or telegrams sent by Buick to Plaintiff, or by Plaintiff to Buick; that the computation, a true and correct photostatic copy of which is attached hereto, has been made, under the supervision of affiant, by auditors furnished by Lybrand, Ross Bros. & Montgomery, certified public accountants, from the books of original entry kept and maintained by Plaintiff in the ordinary course of business, and that affiant believes all of said computation to be correct.

(2) In his opinion Plaintiff had a contract with General Motors Corporation acting through Buick for the purchase of aircraft parts on March 22, 1941, and at all times thereafter; that said contract was not subject to renegotiation by reason of any subsequently enacted statute; and that the basis of said opinion of said affiant is as hereinafter set forth.

(3) That a few weeks prior to March 10, 1941, Plaintiff received from Buick certain blueprints, showing parts of said aviation engines, with a request to Plaintiff to submit quotations as to price or prices at which Plaintiff could furnish said parts together with terms and conditions applicable to such quotations. Pursuant to such request, on March 10, 1941, this affiant caused to be mailed to Buick a letter, dated March 10, 1941, a copy of which is attached to the affidavit and marked "Exhibit B-1", wherein Plaintiff quoted prices on the nineteen parts for aviation engines therein set forth.

[fol. 410] (4) Thereafter on or about March 22, 1941, Plaintiff received from Buick its purchase orders Nos. 762, 764, 765, 769, 770, 771, 772, 773, 774, 777, 779, 780, 781, 782, 783 and 786 for a quantity of parts for said aviation engines identified as parts Nos. 1177, 16429, 20140, 20297, 23145, 23365, 24160, 24163, 24164, 25856, 25689, 34224, 37035, 39028, 39899 and 47793, the same being a portion of the parts upon which Plaintiff had quoted prices on March 10, 1941, as evidenced by Exhibit B-1.

(5) Upon receipt of said purchase orders as aforesaid, Plaintiff acknowledged said orders and requested delivery dates, additional specifications and necessary steel for the completion of said contract by the letter of Plaintiff to Buick, dated March 22, 1941, a copy of which is attached hereto as "Exhibit B-2".

(6) Thereafter on April 30, 1941, Plaintiff received from Buick its letter of April 30, 1941, advising Plaintiff that Buick's aviation order had been doubled, and that Buick's schedule to Plaintiff for a period beginning in September 1941 and ending December 1941 and beginning in January and ending in August 1942 was as attached to said letter; that in addition to meeting said schedule Plaintiff was required to base its calculations on a fifteen to twenty per cent increase for spares and scrap. It requested Plaintiff to immediately advise Buick as to Plaintiff's ability to meet said increased schedules. A copy of said letter of April 30, 1941, and the "Revised Shipping Schedule" attached to said letter are marked "Exhibit B-3" and "Exhibit B-3a", and are attached sheets made a part of this affidavit. Said shipping schedule lists the same parts set forth in plaintiff's quotation dated March 10, 1941, and the difference being only the increased requirements.

(7) Thereafter on May 1, 1941, Plaintiff advised Buick of its ability to meet said increased delivery schedule, as is shown by Plaintiff's letter to Buick dated May 1, 1941, [fol. 411] a copy of which is attached hereto and marked "Exhibit B-4."

(8) Thereafter on or about December 31, 1941, Plaintiff received from Buick its letter of December 31, 1941, outlining Buick's schedule as received from Washington for December 1941, for the entire year 1942, and for the months of January to September 1943, "and the months following at the September monthly rate for the duration." Said letter also advised that:

> "• • • in addition to a sufficient number of parts to meet this engine schedule, you (Aircraft & Diesel Equipment Corporation) will be required to supply whatever may be necessary in the way of pieces to take care of the spare parts program." (Parentheses added.)

said letter also requested Plaintiff to advise what increased facilities it would require to take care of the program and whether Plaintiff would be able to do so; a copy of which said letter of December 31, 1941 from Buick to Plaintiff is attached hereto as "Exhibit B-5".

(9) Following the receipt of said letter of December 31, 1941, aforesaid Exhibit B-5, Plaintiff advised Buick on January 3, 1942, that it needed no additional facilities to take care of the increased schedule, and would improve its shop production schedules for early deliveries, a copy of which said letter dated January 3, 1942, is attached hereto as "Exhibit B-6".

(10) On or about January 10, 1942, Plaintiff received a letter from Buick, advising that the schedule of deliveries had again been changed, and setting forth a new schedule of engine requirements for December 1941, the entire calendar year 1942, and the months of January to September, both inclusive, of 1943, and continuing at the September 1943 schedule "for the duration of the emergency". Said letter of January 10, 1942, also advised plaintiff as follows:

> [fol. 412] "We appreciate that the orders you have at the moment do not cover this schedule, however additional orders are in the process of preparation and your immediate reply as to your ability to take care of us will be greatly appreciated, so that there

will be no delay in forwarding these orders to you when they are ready, which we expect will be within the next week.

"Please arrange all other conditions referred to in our original letter as they still apply and we would appreciate hearing from you promptly relative to this revised schedule."

A copy of said letter of January 10, 1942, is attached hereto and marked "Exhibit B-7".

(11) Thereafter on January 17, 1942, Plaintiff acknowledged said letter of January 10, 1942, "Exhibit B-7" and accepted said increased delivery schedule, a copy of which said letter of January 17, 1942, is attached hereto as "Exhibit B-8".

(12) Thereafter on March 16, 1942, Plaintiff received a letter from Buick advising Plaintiff that Buick had accepted a contract from the Air Corps for an additional 3,000 engines per month beginning June 1943 and from that point on for the duration; that in and by said letter Buick advised plaintiff the parts numbers and the percentage of spares which Plaintiff would be obliged to furnish Buick in order to comply with the said schedule, a copy of which said letter and schedule is attached hereto as "Exhibit B-8a".

(13) Thereafter on March 20, 1942, Plaintiff received a telegram from Buick advising that the engine building program had been increased from 2,000 to 3,000 engines per month, and advising Plaintiff of Buick's monthly requirements from Plaintiff. It also requested Plaintiff to advise Buick if it needed additional equipment to take care of the scheduled production, a copy of which said telegram is attached hereto as "Exhibit B-9".

[fol. 413] (14) On March 21, 1942, Plaintiff replied to said telegram aforesaid "Exhibit B-9" accepting Buick's proposition relating to said increased requirements. It also requested four pieces of machinery to facilitate said deliveries. A copy of said letter of March 21, 1942, is attached hereto as "Exhibit B-10".

(15) On or about April 14, 1942, Plaintiff received a letter from Buick advising that the four machines requested would be forthcoming, and again requesting confirmation of Plaintiff's ability to meet said increased schedule, a

opy of which said letter and schedule are attached as "Exhibits B-11" and "Exhibit B-11a".

(16) On April 16, 1942, Plaintiff advised Buick that it as prepared to meet said increased schedule with the additional machinery furnished. A copy of said letter of April 6, 1942, is attached hereto and marked "Exhibit B-12".

(17) Said additional machinery was received and said elivery schedules maintained.

(18) On July 7, 1942, Plaintiff received from Buick a tter, relative to schedules for the balance of the year 1942, nd the year 1943, showing Buick's requirements during aid period. A copy of said letter and schedules is attached ereto as "Exhibit B-13" and "Exhibit B-13a", which said hedules Plaintiff accepted as shown by its letter to Buick ated July 14, 1942, a copy of which is attached hereto as Exhibit B-14".

(19) Following the receipt of Buick's letter dated December 31, 1941, and following other letters or telegrams hereafter sent to Plaintiff by Buick, increasing requirements of Buick for the parts then being made by Plaintiff, his affiant made or caused to be made (a) shop surveys [Vol. 414] showing work in production, and prior orders (b) machinery on hand, and (c) personnel, and made such anges in production schedules, machinery and personnel was necessary to insure Plaintiff's being able to perform s contracts for the parts being manufactured for Buick in e increased amounts and in accordance with its requirements; that as said increases were made Buick supplied laintiff with steel necessary to do the necessary work to nform to said schedules. Affiant says Buick relied upon aintiff to supply the parts then being made by Plaintiff r Buick, in amounts necessary to meet said increased requirements in accordance with the agreement dated March , 1941, as modified in respect of augmented requirements, evidenced by various Exhibits attached hereto.

(20) On December 19, 1942, Plaintiff received from Buick letter with enclosures regarding renegotiation, a copy which said letter of December 19, 1942, and enclosures, e attached hereto and marked "Exhibit B-15"; that pursant to Buick's letter of December 19, 1942, Plaintiff gned and returned to Buick the copy of such letter as requested by Buick. Affiant further says that on December

19, 1942, and immediately after the passage of the Sixth Supplemental National Defense Appropriation Act on April 28, 1942, he was advised and from his own examination of Section 403, he concluded that Section 403 thereof was unconstitutional and void. Affiant still believes that it is unconstitutional and void.

As to any business transacted in the fiscal year ended November 30, 1943, affiant says that no renegotiation pursuant to the provisions of Section 403 of the Sixth Supplemental National Defense Appropriation Act has ever been attempted by anyone; nor, has there ever been any attempt by anyone ever to renegotiate any of the business or contracts of the Plaintiff in accordance with the provisions of the agreement made with Buick. On the contrary the renegotiation conducted by the War Contracts Price Adjust-
[fol. 415] ment Board was and is wholly outside of the purview of the agreement in respect of renegotiation which Plaintiff returned to Buick. In any event said letter of December 19, 1942, did not authorize, direct or permit renegotiation of any sales made in the year 1943, under the terms and provisions of the Renegotiation Act adopted February 24, 1944, which said Act this affiant also believes to be unconstitutional and void.

Further affiant sayeth not.

B. Ch. Kelleher.

Subscribed and sworn to by me this 29th day of June, A. D., 1945.

Clyde F. DeWitt, Notary Public (Notarial Seal).

(Here follow 4 photolithographs, side folios 416-419)

March 10, 1941

General Motors Corporation
Buick Motor Division
Aviation Engine Plant
Flint, Michigan

Attention: Mr. L. Stewart

Gentlemen:

We are pleased to submit the following quotations on the parts for which prints were left with us a few weeks ago.

Part A-37035 - Valve

Buick to furnish 450 feet of 1 1/16 Rd. material without cost to Adeco.
Lot 2000 pieces
Price. . . . . $ .79 each
Tools additional. $205.00

Part A-24163 - Pipe

Buick to furnish 530 feet of 3/16 OD X 7/16 ID tubing without cost to Adeco.
Lot 2000 pieces
Price. . . . . $ .17 each
Tools additional. . . . . $ 15.00

Part A-25856 - Shaft

Buick to furnish 460 feet of 5/8 Rd. material without cost to Adeco.
Lot 2000 pieces
Price. . . . . $ .34 each
Tools additional. $130.00

Part A-39899 - Dowel

Buick to furnish 250 feet 5/8 Rd. material without cost to Adeco.
Lot 4000 pieces
Price. . . . . $ .06 each
Tools additional. . . . . $ 25.00

J 6803
2614 #
OK

Part A-26689 - Spacer

Buick to furnish 950 feet of 11/16 Rd. material without cost to Adedo.
Lot 20,000 pieces
Price. . . . . $ .06 each
Tools additional. $115.00

Part A-33785 - Tappet Valve

Buick to furnish 28,000 feet of 7/8 Rd. material without cost to Adeco.
Lot 56,000 pieces
Price. . . . . $ 1.20 each
Tools additional. $680.00

out

J 6809
88 #
OK

Part A-24160 - Plate

Buick to furnish 32 feet 5/8 Rd. material without cost to Adeco.
Lot 2000 pieces
Price. . . . . $ .05 each
Tools additional. . . . . $ 15.00

J 6802
1485 #
OK

Part A-1177 - Insert

Buick to furnish 540 feet of 3/8 Rd. material without cost to Adeco.
Lot 4000 pieces
Price. . . . . $ .30 each
Tools additional. . . . . $ 30.00

Part A-20495 - Body

OK

Buick to furnish 290 feet of /8 Rd. material without cost to Adeco.
Lot 2000 pieces
Price. . . . . $ 1.08 each
Tools additional. $405.00

OUT
THRD
MUST BE
GROUND

Part A-18350 - Plunger

X

Buick to furnish 190 feet of 1/2 sq. material without cost to Adeco.
Lot 2000 pieces
Price. . . . . $ .43 each
Tools additional. . . . . $ 95.00

out

258

J-6804 907# OK

Part A-23145 - Spacer

Buick to furnish 330 feet of 9/16 Rd. material without cost to Adeco.
Lot 14,000 pieces
Price. . . . . $ .08 each
Tools additional. . . . . $ 30.00

J-6807 523# OK

Part A-24164 - Shaft

Buick to furnish 190 feet of 3/16 Rd. material without cost to Adeco.
Lot 2000 pieces
Price. . . . . $ .29 each
Tools additional. . . . . $ 65.00

J-6800 √500# OK

Part A-23365 - Pipe

Buick to furnish 2000 feet of [redacted] 7/32 O.D. [redacted] X 1/8 I.D. tubing without cost to Adeco.
Lot 8000 pieces
Price. . . . . $ .16 each
Tools additional. . . . . $ 45.00

J-6815 990# OK

Part A-16429 - Pipe

Buick to furnish [redacted] 360 feet of [redacted] 29/64 O.D. [redacted] X 3/8 I.D. tubing without cost to Adeco.
Lot 2000 pieces
Price. . . . . $ .05 each
Tools additional. . . . . $ 15.00

J-6801 1045# OK

Part A-20140 - Pipe

Buick to furnish 380 feet of 7/32 O.D. X 1/8 I.D. tubing without cost to Adeco.
Lot 4000 pieces
Price. . . . . $ .05 each
Tools additional. . . . . $ 15.00

J-6814 OK 633#

Part A-34224 - Pin

Buick to furnish 230 feet of 3/8 Rd. material without cost to Adeco.
Lot 2000 pieces
Price. . . . . $ .05 each
Tools additional. . . . . $ 30.00

J 6817 798 BK

Part A-39028 - Dowel

Buick to furnish 290 feet of ~~3/8~~ 11/32 Rd. material without cost to Adeco.
Lot 4000 pieces
Price. . . . . $ .05 each
Tools additional. . . . . $ 30.00

J 6805 2337 OK

Part A-20297 - Pin

Buick to furnish 850 feet of 7/16 Rd. material without cost to Adeco.
Lot 12,000 pieces
Price. . . . . $ .08 each
Tools additional. $105.00

J 6810 853 OK

Part A-47793 - Plug

Buick to furnish 310 feet of 3/8 Rd. material without cost to Adeco.
Lot 2000 pieces
Price. . . . . $ .05 each
Tools additional. . . . . $ 15.00

Delivery promises are based on normal expectancy. Acts or demands of the United States Government, fires, strikes, accidents to machinery or other causes unavoidable or beyond our control, or the failure to fill orders accepted. This quotation and delivery promise is subject to change which may be caused by orders which are now pending and which may be scheduled for shop production if received before this order. It supersedes all previous quotations or agreements.

Cancellation of orders can be made only with our consent and upon terms that will indemnify us against loss.

Any quantity up to 10% in excess of or less than the quantity ordered will be regarded as completing same.

The cost of any changes in design or specifications required by the purchaser is chargeable to the purchaser.

We trust that we may have the opportunity of serving you, and remain,

Very truly yours,

AIRCRAFT & DIESEL EQUIPMENT CORPORATION

L. C. Simmons
Sales Department

LCS/rf

2580

[fol. 420] EXHIBIT B-2

March 22, 1941

Buick Motor Division, Aviation Engines Plant, Building #85, Flint, Michigan.

Attention: Mr. B. W. Stickney.

Gentlemen:

We wish to acknowledge with thanks your orders #762, 764, 765, 769, 770-1-2-3-4, 777, 779, 790-1-2-3 and 786.

We are enclosing herewith our purchase orders for the material necessary for these orders. Will you please advise us your best delivery dates for this material so that we may guide our production department accordingly.

In order that we may tool this job, will you kindly send us two copies each of the physical specifications #3 for part #23145 and 2A for part #24164 also 2 copies each of the following material specifications:

PWA	#193	Steel	PWA	#824	Steel
"	815	"	"	132	Alum.
"	178	"	"	173	Steel Tubing.
"	801	"	"	174	" "
"	187	"			

Again we wish to thank you for these orders and the opportunity of serving you.

Very truly yours, Aircraft & Diesel Equipment Corporation; L. G. Simmons, Sales Department.

rf

[fol. 421] "EXHIBIT B-3"

Aviation Engine Plant, Buick Motor Division
General Motors Corporation, Flint, Michigan

April 30, 1941

Aircraft & Diesel Equipment Corporation, 4401 No. Ravenswood Avenue, Chicago, Illinois.

Gentlemen:

Our aviation engine order has now been doubled and our schedule to you will be as attached, and in addition to this schedule, you must figure on 15% to 20% for spares and scrap.

You will please make a survey immediately and advise at once as to your ability to meet this increased schedule.

Your prompt attention and a reply will be appreciated.

Very sincerely yours, Aviation Engine Plant, Buick Motor Division, General Motors Corporation, B. Wm. Stickney, Ass't. Dir. of Purchases.

[fol. 422]

"Exhibit 3-A"

Aircraft and Diesel Equipment Corp.

Revised Shipping Schedule, April 30, 1941

1942

Pur. Order	Part No.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	April	May	June	July	Aug.
P 765	1177	66	150	350	550	800	900	950	1050	1200	1400	1600	1800
P 786	16429	33	75	175	275	400	450	475	525	600	700	800	900
P 764	20140	66	150	350	550	800	900	950	1050	1200	1400	1600	1800
P 771	20297	198	450	1050	1650	2400	2700	2850	3150	3600	4200	4800	5400
P 770	23145	231	525	1225	1925	2800	3150	3325	3675	4200	4900	5600	6300
P 762	23365	132	300	700	1100	1600	1800	1900	2100	2400	2800	3200	3600
P 777	24160	33	75	175	275	400	450	475	525	600	700	800	900
P 774	24163	33	75	175	275	400	450	475	525	600	700	800	900
P 773	24164	33	75	175	275	400	450	475	525	600	700	800	900
P 772	25856	33	75	175	275	400	450	475	525	600	700	800	900
P 769	26689	330	750	1750	2750	4000	4500	2750	5250	6000	7000	8000	9000
P 783	34224	33	75	175	275	400	450	475	525	600	700	800	900
P 782	37035	33	75	175	275	400	450	475	525	600	700	800	900
P 781	39028	66	150	350	550	800	900	950	1050	1200	1400	1600	1800
P 780	39899	66	150	350	550	800	900	950	1050	1200	1400	1600	1800
P 779	47793	33	75	175	275	400	450	475	525	600	700	800	900

The months following August are the same as quantities for August.

[fol. 423] EXHIBIT B-4

May 1, 1941.

Aviation Engine Plant, Bldg. #85, Buick Motor Division,
Flint, Michigan.
Attn: Mr. B. Wm. Stickney, Ass't. Dr. of Purchases.
Gentlemen:

In response to your letter of April 30, 1941, we wish to advise you that we are in a position to meet your increased schedule, this however depends upon your ability to deliver the material to us without delay.

Your prompt delivery of the material will be appreciated and we shall make ever' effort to keep the delivery schedules up to date.

Yours very truly, Aircraft & Diesel Equipment Corporation; L. G. Simmons, Sales Department.

LGS:R

[fol. 424] EXHIBIT B-5

Buick Motor Division, General Motors Corporation
Aviation Engine Plant, Melrose Park, Ill.

December 31, 1941

Aircraft & Diesel Equipment Corp., 4401 N. Ravenswood Avenue, Chicago, Illinois.
Attention: Mr. L. G. Simmons.
Gentlemen:

Referring to our wire of December 11, 1941 concerning instructions from Washington, we give you below our schedule as it has been outlined to us.

Thru	Dec.	558	engines	1943	Jan.	1225 engines
1942	Jan.	400	"		Feb.	1350 "
	Feb.	450	"		Mar.	1475 "
	Mar.	450	"		Apr.	1475 "
	Apr.	450	"		May	1625 "
	May	500	"		June	1775 "
	June	550	"		July	1900 "
	July	600	"		Aug.	2000 "
	Aug.	700	"		Sept.	2000 "
	Sept.	800	"			
	Oct.	900	"			
	Nov.	1000	"			
	Dec.	1100	"			

and the months following will be at this rate for the duration.

In addition to a sufficient number of parts to meet this engine schedule, you will also be required to supply whatever may be necessary in the way of pieces to take care of the spare parts program, which will be given you later. [fol. 425] We want you to make an immediate survey and advise us at once what, if anything in the way of increased facilities will be required by you to take care of this program, also whether or not you will be able to do so.

Your early attention and a prompt reply is essential.

Very truly yours, Aviation Engine Plant, Buick Motor Division, General Motors Corporation; B. Wm. Stickney, Ass't. Dir. of Purchases.

BWS:ab

[fol. 426] EXHIBIT B-6

Jan. 3, 1942.

Buick Motor Division, Aviation Engine Plant, Melrose Park, Illinois.

Attention—Mr. R. Wm. Stickney, Ass't. Dir. of Purch.

Gentlemen:

In response to your letter of December 31, 1941, with reference to the instructions given you from Washington regarding delivery schedules, please be advised that in no way will we be in need of any increased facilities to take care of the program as outlined in your letter.

You may be assured of our best cooperation, and whenever possible, we will improve our shop production schedules for early deliveries.

Very truly yours, Aircraft & Diesel Equipment Corporation; L. G. Simmons, Sales Manager.

[fol. 427] EXHIBIT B-7

Buick Motor Division, General Motors Corporation
Aviation Engine Plant, Melrose Park, Ill.

January 10, 1942

Aircraft & Diesel Equipment Corp., 4401 N. Ravenswood Avenue, Chicago, Illinois.
Attention: Mr. L. G. Simmons.

Gentlemen:

Referring to our letter of December 31, 1941, outlining to you our engine schedule as requested by Washington, this has now been changed and information given us yesterday by Major Ervine and Major Osborne necessitates our changing the figures in our letter of the above date, so that they are as follows:

			Accumulative
Thru	Dec.	558 engines	
1942	Jan.	400	958
	Feb.	450	1408
	Mar.	450	1858
	Apr.	450	2308
	May	500	2808
	June	550	3358
	July	600	3958
	Aug.	700	4658
	Sept.	800	5458
	Oct.	1100	6558
	Nov.	1200	7758
	Dec.	1300	9058
1943	Jan.	1400	10458
	Feb.	1500	11958
	Mar.	1600	13558
	Apr.	1700	15258
	May	1800	17058
	June	1900	18958
	July	2000	20958
	Aug.	2000	22958
	Sept.	2000	24958

and for anything we know now, so on for the duration of the emergency.

[fol. 428] We appreciate that the orders you have at the moment do not cover this schedule, however additional

orders are in the process of preparation and your immediate reply as to your ability to take care of us will be greatly appreciated, so that there will be no delay in forwarding these orders to you when they are ready, which we expect will be within the next week.

Please arrange all other conditions referred to in our original letter as they still apply and we would appreciate hearing from you promptly relative to this revised schedule.

Very truly yours, Buick Motor Division, General Motors Corporation; B. Wm. Stickney, Ass't. Dir. of Purchases.

BWS:ab

[fol. 429] EXHIBIT B-8

Buick Motor Div., Aviation Engine Plant, Melrose Park, Illinois.

Attention—Mr. B. Wm. Stickney.

Gentlemen:

In response to your letter of January 10, 1942, with reference to increase in your engine schedule, we are pleased to advise you that at this writing we can see no reason why we would not be able to meet the delivery schedule as outlined in your letter.

While we are not taking on any new accounts, we are making every possible effort to serve our own customers and we are endeavoring to approximate their needs in the coming year so that we will be in a position to serve them.

Trusting that we may have the opportunity of serving you and assuring you of our best possible cooperation, we remain

Very truly yours, Aircraft & Diesel Equipment Corporation; L. G. Simmons, Sales Manager.

LGS:M

[fol. 430] EXHIBIT B-8-A

Buick Motor Division, General Motors Corporation
Melrose Park, Ill.

March 16, 1942

Aircraft & Diesel Equipment Corp., 4401 N. Ravenswood Ave., Chicago, Ill.
Attention: Mr. L. G. Simmons.
Gentlemen:

We have accepted the assignment from the Air Corp to increase our engine schedule to 3,000 engines per month by June 1943.

We are attaching hereto a form on which we have shown in pieces required, our projected schedule through June 1943, when this figure is reached and from this point on, as we see it today, it should remain constant. We have also shown opposite each part number the percentage of spares for that particular part, which percentage is against the quantity shown for each month as the spares must be shipped to us this way inasmuch as we are obliged to furnish them concurrently with the engines as we ship them.

All figures on this schedule are net and by that we mean that no allowance has been made for rejected material, vendor responsible and no allowance has been made for scrap loss in our own plant. These are items which we are unable to give any estimate on today, but are quantities which will have to be added to the requirements shown, as and when they develop.

You will please study this enclosed schedule and advise us just as quickly as possible your ability to meet the same.

Very truly yours, Buick Motor Division, General Motors Corporation; B. Wm. Stickney, Ass't. Dir. of Purchases.

BWS:mw
encl.

(Here follows photolithograph side folio 431)

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 N. Ravenswood Ave.
Chicago, Ill.

PROJECTED SCHEDULE OF REQUIREMENTS IN PIECES
Add to Each Month Requirement Percentage for Spares as Shown in Last Column

Part #	Name	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	1943 Jan.	Feb.	Mar.	Apr.	May	June	Plus % Spares
1177	Insert	1200	1600	1800	2000	2200	2600	3000	3400	3800	4000	4000	4400	4800	5200	5600	6000	14%
0140	Pipe	1200	1600	1800	2000	2200	2600	3000	3400	3800	4000	4000	4400	4800	5200	5600	6000	12%
20297	Pin	3600	4800	5400	6000	6600	7800	9000	10200	11400	12000	12000	13200	14400	15600	16800	18000	1%
23145	Spacer	4200	5600	6300	7000	7700	9100	10500	11900	13300	14000	14000	15400	16800	18200	19600	21000	9%
23365	Pipe	2400	3200	3600	4000	4400	5200	6000	6800	7600	8000	8000	8800	9600	10400	11200	12000	12%
24160	Plate	600	800	900	1000	1100	1300	1500	1700	1900	2000	2000	2200	2400	2600	2800	3000	18%
24164	Shaft	600	800	900	1000	1100	1300	1500	1700	1900	2000	2000	2200	2400	2600	2800	3000	20%
25856	Shaft	600	800	900	1000	1100	1300	1500	1700	1900	2000	2000	2200	2400	2600	2800	3000	39%
26689	Spacer	6000	8000	9000	10000	11000	13000	15000	17000	19000	20000	20000	22000	24000	26000	28000	30000	5%
34224	Pin	600	800	900	1000	1100	1300	1500	1700	1900	2000	2000	2200	2400	2600	2800	3000	28%
37035	Valve	600	800	900	1000	1100	1300	1500	1700	1900	2000	2000	2200	2400	2600	2800	3000	27%
39028	Dowel	1200	1600	1800	2000	2200	2600	3000	3400	3800	4000	4000	4400	4800	5200	5600	6000	10%
39899	Dowel	1200	1600	1800	2000	2200	2600	3000	3400	3800	4000	4000	4400	4800	5200	5600	6000	10%
47793	Plug	600	800	900	1000	1100	1300	1500	1700	1900	2000	2000	2200	2400	2600	2800	3000	12%

[fol. 432] EXHIBIT B-9

AK119 BUK2 TWS Paid 3 Mins—Melrose Park Ill 244P Mar 20 1942—C B Kelleher Aircraft & Diesel Equipment Corp—4401 N Ravenswood Ave Chicago Ill—

We have been instructed by the Army Air Corp to proceed at once in placing orders with our machinery tool builders prior to April first to take care of our increased engine building program from 2,000 to 3,000 engines per month. You have already received a letter from us under recent date giving you our monthly requirements. If you require additional equipment to take care of this production, it is necessary in order for you to obtain mac-inery, that your orders also be placed prior to April First.

L. A. Stewart, Buick Motor Division.

[fol. 433] EXHIBIT B-10

March 21, 1942

Buick Motor Division, General Motors Corporation, Aviation Engine Plant, Melrose Park, Illinois.
Attention: Mr. B. Wm. Stickney.

Gentlemen:

On March 20, 1942, we received a telegram from your Mr. L. A. Stewart about machinery needed to step up production on your parts to take care of 3,000 engines per month.

In order to supply you with the parts, in the quantities necessary to meet your schedule of 3,000 engines per month our machine capacity should be increased by the following machines:

Two (2) #2 Brown & Sharpe High Speed Automatics with standard equipment at an estimated cost of	$4,400.00 ea.
One (1) #1 Brown & Sharpe Universal Grinding Machine complete but less No. 03M Internal Grinding fixture at an estimated cost of	$3,515.00
One (1) Van Norman Handmill Reversing Mechanism, Coolant tank and motor at an estimated cost of	$1,827.00

We are not in a position to purchase this machinery ourselves. However you (like some of our other customers who have increased their schedules with us) may wish to purchase this machinery and loan it to us for your work.

Very truly yours, Aircraft & Diesel Equipment Corporation, B. Ch. Kelleher, President.

BCK:rf

[fol. 434] EXHIBIT B-11

Buick Motor Division, General Motors Sales Corporation
Aviation Engine Plant, Melrose Park, Ill.

April 14, 1942

Aircraft & Diesel Equipment Corporation, 4401 No. Ravenswood Avenue, Chicago, Illinois.
Attention: Mr. B. C. Kelleher.

Gentlemen:

This will acknowledge receipt of your letter of March 21st. with reference to the projected schedule which we sent you on March 20th. and is to advise you that the necessary machinery has been set in motion to provide the four machines referred to in that letter.

We are assuming that this is all you need to take care of the increased schedule as outlined to you.

Will you kindly advise regarding.

Very truly yours, Buick Motor Division, General Motors Corporation; B. Wm. Stickney, Ass't. Dir. of Purchases.

BWS:mw

[fol. 435] EXHIBIT B-12

April 16, 1942.

Buick Motor Division, General Motors Corporation, Aviation Engine Plant, Melrose Park, Illinois.
Attn: Mr. B. W. Stickney, Ass't. Dir. of Purchases.

Gentlemen:

In answer to your letter of April 14th, we wish to advise you that we feel that we can take care of the produc

tion of your parts for your increased schedule with the additional machinery listed in our letter of March 21st.

Very truly yours, Aircraft & Diesel Equipment Corporation; B. Ch. Kelleher, President.

BChK:R

[fol. 436] EXHIBIT B-13

Buick Motor Division, General Motors Corporation
Melrose Park, Ill.

July 7, 1942

Aircraft & Diesel Equipment Co., 4401 North Ravenswood Avenue, Chicago, Illinois.

Attention:

Gentlemen:

We have had a revision from the A. A. F. in our engine schedule and also in the quantities of spares which it is necessary for us to furnish.

We have worked out this requirement, which has been projected over the balance of this year and through 1943, showing you our requirements by months and the accumulative total.

We would like to have you review this revised requirement as quickly as possible and advise us as to your ability to take care of our requirements as outlined on the attached projection.

Your early attention and a prompt reply giving us this information is requested and will be appreciated.

Very truly yours, Buick Motor Division, General Motors Corporation; B. Wm. Stickney, Ass't. Dir. of Purchases.

BWS:mw
encl.

[fol. 437]

EXHIBIT B-13-A

Aircraft & Diesel Equipment Corp.

July 11, 1942

Page 1

Part No.		Thru June	July	Aug.	Sept.	Oct.	Nov.	Dec.
1177	Total	6278	1800	2112	2400	2700	2940	3420
	Accum. Total	6278	8078	10190	12590	15290	18230	21650
20140	Total	6802	1950	2288	2600	2925	3185	3705
	Accum. Total	6802	8752	11040	13640	16565	19750	23455
20297	Total	18835	5400	6336	7200	8100	8820	10260
	Accum. Total	18835	24235	30571	37771	45871	54691	64951
2—45	Total	58946	16900	19829	22533	25350	27603	32110
	Accum. Total	58946	75846	95675	118208	143558	171161	203271
23365	Total	13603	3900	4576	5200	5850	6370	7410
	Accum. Total	13603	17503	22076	27279	33129	39499	46909

[fol. 438]

Aircraft & Diesel Equipment Corp.

July 11, 1942

Page 1-A

Part No.		1943 Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
1177	Total	4209	4709	5358	5954	6684	7355	7381	7406	7432	7452	7494	7476
	Accum. Total	25859	30568	35926	41880	48564	55919	63300	70706	78138	85590	93084	100560
20140	Total	4406	5138	5862	6507	7302	7933	8073	8110	8459	8839	9281	9800
	Accum. Total	27861	32999	38861	45368	52670	60603	68676	76786	85245	94084	103365	113165
20297	Total	12162	14127	16075	17864	20054	22065	22146	22220	22298	22360	22484	22639
	Accum. Total	77113	91240	107315	125179	145233	167298	189444	211664	233962	256322	278806	301445
23145	Total	37875	43719	49542	55162	61961	68198	68301	68397	68497	68577	68736	68936
	Accum. Total	241146	284865	334407	389569	451530	519728	588029	656426	724923	793500	862236	931172
23365	Total	8812	10277	11724	13014	14604	16065	16612	17232	17930	18690	19574	20613
	Accum. Total	55721	65998	77722	90736	105340	121405	138017	155249	173179	191869	211443	232053

[fol. 439]

Aircraft & Diesel Equipment Corporation

July 13, 1942

Page 2

Part No.		Thru June	July	Aug.	Sept.	Oct.	Nov.	Dec.
24160	Total	3139	900	1056	1200	1350	1470	1710
	Accum. Total	3139	4039	5095	6295	7645	9115	10825
24164	Total	3139	900	1056	1200	1350	1470	1710
	Accum. Total	3139	4039	5095	6295	7645	9115	10825
25856	Total	3924	1125	1320	1500	1688	1838	2138
	Accum. Total	3924	5049	6369	7869	9557	11395	13533
26689	Total	39240	11250	13200	15000	16875	18375	21375
	Accum. Total	39240	50490	63690	78690	95565	113940	135315
34224	Total	3924	1125	1320	1500	1688	1838	2138
	Accum. Total	3924	5049	6369	7869	9557	11395	13533

[fol. 440]

Aircraft & Diesel Equipment Corporation

July 13, 1942

Page 2A

Part No.		1943 Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
24160	Total	2027	2354	2679	2977	3342	3677	3691	3703	3716	3726	3747	3773
	Accum. Total	12852	15206	17885	20862	24204	27881	31572	35275	38991	42717	46464	50237
24164	Total	2027	2354	2679	2977	3342	3677	3691	3703	3716	3726	3747	3773
	Accum. Total	12852	15206	17885	20862	24204	27881	31572	35275	38991	42717	46464	50237
25856	Total	2556	2999	3436	3807	4269	4694	4728	4759	4791	4817	4869	4934
	Accum. Total	16089	19088	22524	26331	30600	35294	40022	44781	49572	54389	59258	64192
26689	Total	25552	29989	34355	38061	42688	46943	47279	47590	47914	48173	48691	49338
	Accum. Total	160867	190856	225211	263272	305960	352903	400182	447772	495686	543859	592550	641888
34224	Total	2556	2999	3436	3807	4269	4694	4728	4759	4791	4817	4869	4934
	Accum. Total	16089	19088	22524	26339	30600	35294	40022	44781	49572	54389	59258	64192

[fol. 441]

Aircraft & Diesel Corp.

July 11, 1942

Page 3

Part No.		Thru June	July	Aug.	Sept.	Oct.	Nov.	Dec.
37035	Total	3270	938	1100	1250	1406	1531	1781
	Accum. Total	3270	4208	5308	6558	7964	9495	11276
—028	Total	6069	1740	2032	2320	2610	2842	3306
	Accum. Total	6069	7809	9841	12161	14771	17613	20919
39899	Total	6069	1740	2032	2320	2610	2842	3306
	Accum. Total	6069	7809	9841	12161	14771	17613	20919
—93	Total	3322	953	1118	1270	1429	1551	1810
	Accum. Total	3322	4275	5393	6663	8092	9643	11453

[fol. 442]

Aircraft & Diesel Equipment Corporation

July 13, 1942

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Part No.		Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
37035	Total	2115	2462	2805	3115	3496	3847	3864	3879	3895	3908	3934	3966
	Accum. Total	13391	15853	18658	21773	25269	29116	32980	36859	40754	44662	48596	52562
39028	Total	3914	4538	5157	5734	6438	7085	7106	7126	7147	7163	7197	7238
	Accum. Total	24833	29371	34528	40262	46700	53785	60891	68017	75164	82327	89524	96762
39899	Total	3914	4538	5157	5734	6438	7085	7106	7126	7147	7163	7197	7238
	Accum. Total	24633	29371	34528	40262	46700	53785	60891	68017	75164	82327	89524	96762
47793	Total	2150	2505	2856	3171	3559	3915	3933	3950	3968	3982	4010	4045
	Accum. Total	13610	16108	18964	22135	25694	29609	33542	37492	41460	46442	49452	53497

[fol. 443] EXHIBIT B-14

July 14, 1942.

Buick Motor Division, General Motors Corporation, Melrose Park, Ill.

Attn: Mr. B. W. Stickney, Ass't. Director of Purchases.

Gentlemen:

We have reviewed your schedule of your requirements of the parts which we are making for you, and believe that we can keep up with your required deliveries provided we receive the delivery of your machinery within the next three months.

Very truly yours, Aircraft & Diesel Equipment Corporation; L. G. Simmons, Sales Manager.

LGS:R

[fol. 444] EXHIBIT B-15

Buick Motor Division, General Motors Corporation
Flint, Michigan

December 19, 1942

Aircraft & Diesel Equipment Corp., 4401 Ravenswood Avenue, Chicago, Illinois.

Gentlemen:

This is to advise you that the Government prime contracts listed below, on which General Motors Corporation (Buick Motor Division) is prime contractor or a major subcontractor, are all subject to renegotiation, as set forth in the Sixth Supplemental National Defense Appropriation Act, approved April 28, 1942. Accordingly, said contracts contain an article directing General Motors Corporation (Buick Motor Division) as contractor to include a renegotiation provision as a part of all subcontracts and purchase orders issued thereunder:

Column I Contract No.	Column II Applicable Renegotiation Clause	Column III Purchase Orders Subject to Renegotiation
W-374-Ord-1889	Exhibit A—Buick 1615A	April 28, 1942
W-535-AC-24931	Exhibit A—Buick 1615A	July 28, 1942
W-535-AC-29294	Exhibit A—Buick 1615A	May 21, 1942
W-374-Ord-1464 (Supply)	Exhibit A—Buick 1615A	April 28, 1942
W-374-Ord-1464 (Facilities)	Exhibit A—Buick 1615B	April 28, 1942
W-374-Ord-1309 (Supply)	Exhibit A—Buick 1615A	April 28, 1942
W-374-Ord-1309 (Facilities)	Exhibit A—Buick 1615B	April 28, 1942
W-535-AC-30132	Exhibit A—Buick 1615	April 28, 1942
W-535-AC-29020	Exhibit A—Buick 1615	April 28, 1942
W-374-Ord-1668	Exhibit A—Buick 1615	April 28, 1942
W-535-AC-17479	Exhibit A—Buick 1615A	October 12, 1942
W-535-AC-24592	Exhibit A—Buick 1615A	October 12, 1942

In order that Buick Motor Division may comply with the provisions of each of the above Government contracts (Column 1), it is necessary that we request you to agree that the renegotiation provisions applicable to each of [fol. 445] the above Government contracts, as shown in Column II of the above chart, and which renegotiation provisions are attached hereto and identified as Exhibit "A—Buick 1615", Exhibit "A—Buick 1615A, and Exhibit "A—Buick 1615B, as the case may be, are applicable to and a part of each purchase order issued to you by Buick Motor Division of General Motors Corporation on and after the date shown in Column III of the above chart, when said purchase order, either alone, or in combination with other purchase orders for material to be used on the same Government contract, equals or exceeds an amount of $100,000.00.

In the attached Exhibits "A" (Buick 1615, 1615A, and 1615B, respectively) the term "Seller" means Aircraft & Diesel Equipment Corp. and the term "Buyer" means General Motors Corporation (Buick Motor Division).

If you will refer to purchase orders issued by General Motors Corporation (Buick Motor Division) you will note the Government contract number typed on the face of the purchase order.

Beginning December 21, 1942, Buick Motor Division will attach the appropriate renegotiation clause to each purchase order issued on and after that date, with the request that the Supplier agree that such renegotiation clause shall be applicable to that particular purchase order if it exceeds $100,000.00, or to that particular purchase order when it, along with previous or subsequent purchase orders issued for material to be used on the same Government contract, equals or exceeds $100,000.00.

In order that Buick Motor Division may secure your acceptance of the above understanding and agreement, it is requested that you sign the carbon copy of this letter attached hereto in the space provided thereon for acceptance, and return same to the undersigned for our files.

Very truly yours, General Motors Corporation (Buick Motor Division), By (Name illegible), Ass't Director of Purchases.

WJB:B

Accepted: Aircraft & Diesel Equipment Corp., By ——, Duly Authorized Officer; T. J. Murphy, Comptroller.

[fol. 446] Buick 1615

EXHIBIT A

Renegotiation Pursuant to Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942.

1. At such period or periods when in the judgment of the Secretary the profits accruing to Seller under this contract can be determined with reasonable certainty, the Secretary and Seller upon the written demand of the Secretary will renegotiate the contract price with a view of eliminating such profits which are found, as a result of such renegotiation, to be excessive.

2. In the event that such a renegotiation results in a reduction of contract price, the amount of such reduction shall, as directed by the Secretary,

(a) Be deducted by Buyer from payments to Seller under this Contract; or

(b) Be paid by Seller directly to the Government; or

(c) Be repaid by Seller to Buyer.

3. Seller agrees that Buyer shall not be liable to Seller for or on account of any amount repaid to Buyer or paid to the Government by Seller or deducted by Buyer from payments under this contract, pursuant to directions from the Secretary in accordance with provisions of this article. Under its contract with the Government, Buyer is obligated to pay or credit to the Government all amounts repaid by or withheld from Seller hereunder.

4. The term "Secretary" as used in this article means Secretary of War or any duly authorized representative of the Secretary, including the Contracting Officer.

Buick 1615-A

[fol. 447] EXHIBIT A

"ARTICLE — Renegotiation Pursuant to Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942.

"(1) Upon the written demand of the Secretary, at such period or periods when, in the judgment of the Secretary, the profits accruing to Seller, under this contract can be determined with reasonable certainty, the Secretary and Seller, will renegotiate the contract price to eliminate therefrom any amount found as a result of such renegotiation

to represent excessive profits. The demand of such renegotiation to represent excessive profits. The demand of the Secretary shall fix a place for renegotiation and a time for the commencement thereof not later than one year after the date of completion or termination of this contract as found by the Secretary.

"(2) Seller will furnish to the Secretary such statements of actual costs of production and such other financial statements, at such times and in such form and detail, as the Secretary may prescribe, and will permit such audits and inspections of its books and records as the Secretary may request.

"(3) Any amount of the contract price found as a result of such renegotiation to represent excessive profits shall, as directed by the Secretary,

"(a) Be deducted by Buyer from payments otherwise due to Seller under this contract; or

"(b) Be paid by Seller directly to the Government.

"(4) Seller agrees that Buyer shall not be liable to Seller for or on account of any amount paid to the Government by Seller or deducted by Buyer from payments otherwise due under this contract, pursuant to directions from the Secretary in accordance with the provisions of this Article. Under its contract with the Government, Buyer is obligated to pay or credit to the Government all amounts withheld by it from Seller hereunder.

"(5) As used in this article:

"(a) The term 'Secretary' means the Secretary of War or any duly authorized representative of the Secretary, including the contracting officer;

"(b) The terms 'Renegotiate' and 'renegotiation' have the same meaning as in Section 403 (b) of the Sixth Supplemental National Defense Appropriation Act, 1942;

"(c) The term 'this contract' means this contract as modified from time to time.

[fol. 448] Buick 1615-B

EXHIBIT A

"ARTICLE —Renegotiation Pursuant to Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942.

"(1) Upon the written demand of the Secretary, at such period or periods when, in the judgment of the Secretary, the profits accruing to Seller, under this contract can be determined with reasonable certainty, the Secretary and Seller, will renegotiate the contract price to eliminate therefrom any amount found as a result of such renegotiation to represent excessive profits. The demand of the Secretary shall fix a place for renegotiation and a time for the commencement thereof not later than one year after the date of completion or termination of this contract as found by the Secretary.

"(2) Seller will furnish to the Secretary such statements of actual costs of production and such other financial statements, at such times and in such form and detail, as the Secretary may prescribe, and will permit such audits and inspections of its books and records as the Secretary may request.

"(3) Any amount of the contract price found as a result of such renegotiation to represent excessive profits shall, as directed by the Secretary,

"(a) Be deducted by Buyer from payments otherwise due to Seller under this contract; or

"(b) Be paid by Seller directly to the Government.

"(4) Seller agrees that Buyer shall not be liable to Seller for or on account of any amount paid to the Government by Seller or deducted by Buyer from payments otherwise due under this contract, pursuant to directions from the Secretary in accordance with the provisions of this Article. Under its contract with the Government, Buyer is obligated to pay or credit to the Government all amounts withheld by it from Seller hereunder.

"(5) As used in this Article:

"(a) The term 'Secretary' means the Secretary of War or any duly authorized representative of the Secretary including the contracting officer;

"(b) The terms 'Renegotiate' and 'Renegotiation' have the same meaning as in Section 403 (b) of the Sixth Supplemental National Defense Appropriation Act, 1942;

"(c) The term 'this contract' means this contract as modified from time to time.

"(6) Seller agrees (a) to include in each fixed-price or lump-sum sub-contract hereunder for an amount in excess of $100,000 the foregoing sections (1) to (5) inclusive, and

(b) to make no subdivisions of any contract or sub-contract for the purpose of evading the provisions of this section, and (c) to repay to the government the amount of any reduction in the contract price of any such contract which results from renegotiation thereof by the Secretary and which the Secretary directs Seller to withhold from payments otherwise due under such contract and actually unpaid at the time Seller receives such direction."

ALLMART & DIESEL EQUIPMENT CORP.
4601 Rutherwood Avenue
CHICAGO, ILL.

BUDA MOTORS DIVISION

4 of 17

SHIPMENTS

PART NO	NUMBER FIRST ORDER	DESCRIPTION	Nov. 30 1941	Dec. 1 to 9-11-42	To 11-30-42	Nov. 30, 1942	Nov. 30, 1943	May 31, 1945	TOTAL	Shipments on orders received prior to 9-11-42	Shipments on orders received after 9-11-42
23365	P-764	Pin Crank Pin	46[illegible]55		1139[illegible]	37[illegible]49	38589[illegible]5	18[illegible]08	11[illegible]49	20[illegible]81	29[illegible]11
20140	P-766	Pin & Shaft Oil	[illegible]766 43		[illegible]7705	388[illegible]17	4093[illegible]85	1593[illegible]1	1[illegible]560 91	[illegible]400 24	1016068
1177	P-765	Insert	9[illegible]86	183900	5940[illegible]68	1738930	3[illegible]3[illegible]76	4[illegible]93[illegible]4	6[illegible]6[illegible]6 93	1[illegible]67[illegible]6	50[illegible]4[illegible]8
[illegible]6689	P 769	Spacer	439163		87[illegible]5[illegible]1	[illegible]76[illegible]677	38070[illegible]85	9[illegible]47[illegible]6	8[illegible]76[illegible]17	1[illegible]33[illegible]76	70[illegible]636
[illegible]3145	P-770	Spacer	3[illegible]96[illegible]71		[illegible]28[illegible]5[illegible]97	68[illegible]00 69	[illegible]49[illegible]29	1[illegible]65[illegible]87	156[illegible]7103	1[illegible]19[illegible]2	1[illegible]40[illegible]75[illegible]0
20297	P-771	Pin Clutch Springs Sub.	[illegible]7[illegible]38		[illegible]41133	2[illegible]85[illegible]3	16[illegible]6[illegible]89	2[illegible]90[illegible]7	5[illegible]15[illegible]75	1[illegible]19098	3996177
35850	P 772	Shaft Oil Pump Idler	[illegible]097 97		[illegible]4[illegible]74	15[illegible]470	17896[illegible]51	7[illegible]7[illegible]7	[illegible]4[illegible]596[illegible]4	10[illegible]8[illegible]18	37[illegible]0[illegible]4
[illegible]4164	P 773	Shaft Sub Fuel Drain	[illegible]1[illegible]70		3[illegible]90160	10363[illegible]9	8[illegible]8[illegible]85	1[illegible]56[illegible]00	[illegible]59[illegible]26	[illegible]6[illegible]08	10[illegible]3[illegible]16
[illegible]2160	P 777	Plate Sub Fuel Drive Valve	39[illegible]41		[illegible]793[illegible]	[illegible]385[illegible]8	[illegible]21393		[illegible]7[illegible]85 73	1[illegible]46[illegible]	133071
39078	P 861	Dowel	8[illegible]500		21[illegible]5[illegible]	[illegible]4[illegible]7[illegible]87	[illegible]57[illegible]57	1[illegible]283[illegible]	1[illegible]8[illegible]5[illegible]61	3683[illegible]7	1057[illegible]3[illegible]
47793	P 779	Plug	[illegible]8[illegible]91	1[illegible]78[illegible]	15[illegible]6[illegible]	[illegible]6[illegible]73	[illegible]180[illegible]	51[illegible]00	8[illegible]0[illegible]70	3078[illegible]0	53[illegible]560
39899	P 780	Dowel Gun Drive	100[illegible]17		1[illegible]5[illegible]88	[illegible]368[illegible]87	4[illegible]00[illegible]50	[illegible]7[illegible]1[illegible]7	1[illegible]5[illegible]967[illegible]08	[illegible]3[illegible]7[illegible]6[illegible]5	116[illegible]0[illegible]3
37035	P 781	Valve Combustion Relief	[illegible]5[illegible]96	[illegible]4[illegible]9	[illegible]58[illegible]978	2[illegible]83[illegible]3	[illegible]60[illegible]9[illegible]5[illegible]		5[illegible]5[illegible]596[illegible]3	1[illegible]36[illegible]	37[illegible]4[illegible]1
3[illegible]4[illegible]	P 783	Pin Crank Shaft	[illegible]49985		168[illegible]05	[illegible]5[illegible]79[illegible]	[illegible]893[illegible]3	[illegible]71[illegible]4[illegible]	15[illegible]57[illegible]	3[illegible]13[illegible]00	119[illegible]9[illegible]5
[illegible]6[illegible]49	P 784	Bush Cam Starter Fa[illegible]	[illegible]6[illegible]38[illegible]						[illegible]6[illegible]3[illegible]59	[illegible]6[illegible]3[illegible]59	
79414		Pin Set Screw Locking				[illegible]58[illegible]76	21[illegible]5[illegible]29	[illegible]16[illegible]5[illegible]90	[illegible]4[illegible]9[illegible]19[illegible]		[illegible]4[illegible]7[illegible]19[illegible]
			$ 31[illegible]68 35	41[illegible]45	$ 5[illegible]9[illegible]4[illegible]09	[illegible]56[illegible]09[illegible]6	[illegible]6[illegible]5[illegible]87	60[illegible]1[illegible]538	7[illegible]17[illegible]59[illegible]5[illegible]6	1[illegible]33[illegible]0885	57[illegible]78[illegible]1

ORDERS RECEIVED PRIOR TO 9-11-42 SHIPMENTS

PART NO	1941	1942	1943	TOTAL
23365	[illegible]	1139[illegible]	[illegible]	[illegible]
20140	[illegible]	1143760	196[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]6689	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]3145	[illegible]	[illegible]	[illegible]	[illegible]
20297	[illegible]	[illegible]	[illegible]	[illegible]
35850	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]4164	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]2160	[illegible]	[illegible]	[illegible]	[illegible]
39078	[illegible]	[illegible]	[illegible]	[illegible]
47793	[illegible]	[illegible]	[illegible]	[illegible]
39899	100[illegible]17	[illegible]	[illegible]	[illegible]
37035	[illegible]	[illegible]	[illegible]	[illegible]
3[illegible]4[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]6[illegible]49	[illegible]	[illegible]	[illegible]	[illegible]
	$ 31[illegible]68 32	[illegible]	[illegible]	[illegible]

ORDERS AFTER 9/11/42 [illegible]

Exhib

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer BUICK — Part Number 23265 — PIPE CRANK PIN.

Purchase Order No.	Order Date	Quantity	Date of 1st Delv.	1941	Shipments 12-7-41 to 1-28-42	1942	1943	1944	1945	Overrun	Cancelled Orders	Balance
P-76V	3-12-41	V 000	9-9-41	462.55								
P V788	1-15-42	23436	6-6-42			Rel 6V						
P 3659	3-18-42	25000	9-15-42			5701 47	37313					
P 5355	4-16-42	16788	12-5-42				29.331					
P 6731	7-15-42	7400	4-27-43				5845 21					
P 9418	6-9-42	4300	3-30-43				5589.90					
P 12518	8-7-42	45600	3-31-43				11080.77					
P 14975	11-13-42	8000	7-14-43				1901.7					
P 15815	1-7-43	65000	8-5-43				13781.62	2946				
P 7477	2-23-43	30000	12-9-43					11160.00				
P V685	6-17-43	29800	2-10-44					4778.00			16000	
P 29109	9-17-43	30000	3-23-44					7007.00			3000	
P 13791	10-11-43	18100	Cancelled								18100	
P 3V870	10-28-43	1497	11-8-43				2876.61					
P 37673	11-28-43	18000	5-19-44					5580.00				
P 39968	3-11-44	1370	6-30-44					4247.00				
41079	4-24-44	25000	5-29-44					7750.00				
41871	4-12-44	20000	7-24-44					6200.00	2480.44			
42823	4-10-44	1000	5-24-44					2976.00				
43147	4-26-44	10000	5-27-44					3100.00				
43668	10-2-44	378	10-20-44					1171.80			378.00	
44078	11-10-44	10000	12-27-44					3100.00				
44269	11-27-44	10000	12-27-44					3100.00				
44270	11-27-44	10000	12-27-44					3100.00				
44271	11-27-44	10000	12-27-44					3100.00				
44272	11-27-44	10000	12-27-44					3100.00				
44907	1-11-45	10000	2-28-45						3100.00			
45069	1-24-45	7000										
45171	2-1-45	10000										
45467	2-22-45	10000										
45849	3-8-45	20000									7000	
46287	3-30-45	10000									10000	
46370	4-2-45	10000									10000	
46823	4-11-45	211	4-24-45						65.41			
47627	5-15-45	10000										
CREDITS												

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Page Number 1 of 17

Part No. 20140

Piper Cub Shatt Oil

Purchase Orders No.	Date	Quantity	Date of Last Order	1943	1944	1945	1946	1947	Rejects	Overrun	Cancelled	Balance
P 7644	3-[illegible]-41	10000	8-[illegible]-41	16643						944		
P 4116	3-7-41	1[illegible]00	8-31-41			8400						
P 5191	4-16-41	900	8-8-41			597.66	196.19			[illegible]64		
P 9416	6-9-41	1[illegible]00	1-[illegible]-43				8400					
P 10176	7-13-41	400	1-[illegible]-43				[illegible]800					
P 12516	8-7-41	[illegible]800	1-[illegible]-43				1405.04		[illegible]68			
P 15819	1-7-43	3[illegible]000	6-26-43				[illegible]0683	1437				
P 16660	1-[illegible]-43	[illegible]288	4-[illegible]-43				1800					
P 17480	[illegible]-3-41	19[illegible]00	1[illegible]-[illegible]-43					Replaced defective material				
P [illegible]683	6-17-43	900	3-31-44								600	
P [illegible]867	9-17-43	1250	3-31-44								4[illegible]0	
P 3[illegible]89	[illegible]-[illegible]-43	880	Cancelled								400	
P 3767	[illegible]-28-41	400	4-30-44									
P [illegible]91	1-[illegible]-44	11[illegible]9	5-16-44			789.29						
[illegible]0176	[illegible]-[illegible]-44	6[illegible]00	[illegible]-[illegible]-44									
[illegible]1819	[illegible]-[illegible]-44	[illegible]000	8-16-44					1637	650		500	
[illegible]4597	[illegible]-[illegible]-44	[illegible]01	[illegible]-30-44					4217				
[illegible]0536	[illegible]-31-44	[illegible]000									[illegible]000	
[illegible]1418	[illegible]-28-44	[illegible]400									[illegible]400	
[illegible]6198	11-10-44	[illegible]000	[illegible]-1-45									
[illegible]6199	11-10-44	[illegible]400	[illegible]-31-45									
[illegible]4445	[illegible]-11-44	[illegible]400	1-[illegible]-45									
[illegible]9069	[illegible]-[illegible]-44	[illegible]000	[illegible]-[illegible]-45									
[illegible]4509	[illegible]-[illegible]-44	400	[illegible]-[illegible]-45									
[illegible]4629	[illegible]-[illegible]-44	[illegible]000	[illegible]-[illegible]-45									
[illegible]0479	[illegible]-[illegible]-44	[illegible]000	[illegible]-[illegible]-45									
[illegible]4879	[illegible]-[illegible]-44	[illegible]000	[illegible]-[illegible]-45									
[illegible]5329	[illegible]-[illegible]-44	[illegible]000										
[illegible]5329	[illegible]-[illegible]-44	[illegible]000										
[illegible]6479	[illegible]-[illegible]-44	1[illegible]67	[illegible]-[illegible]-45									
[illegible]7450	[illegible]-[illegible]-45	[illegible]000										
[illegible]8183	[illegible]-[illegible]-45	[illegible]4[illegible]	[illegible]-[illegible]-45									
[illegible]9461	[illegible]-[illegible]-45	[illegible]000										
				[illegible]6[illegible]96	[illegible]0[illegible]4[illegible]	[illegible]6[illegible]3[illegible]	[illegible]5[illegible]3[illegible]	[illegible]4[illegible]3[illegible]	[illegible]4[illegible]3[illegible]			
Credits						[illegible]907						
						[illegible]9[illegible]0[illegible]						

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Buick — Part No. 1177

INSERT

Purchase Release No.	Date	Quantity	Date of 1st delivery	1941	1942	1943	1944	1945	Overrun Cancellations
[illegible] 765	9-12-41	60000	10-22-41	97786	183900				1079
[illegible] 2542	1-15-42	12000	7-17-42			40800			
[illegible] 3605	3-17-42	12750	9-28-42			180948	233052		75
[illegible] 4980	4-15-42	9000	2-10-43				81770		5
[illegible] 6518	7-15-42	16900	4-2-43				50[illegible]		2142
16918	1-8-43	18600	9-11-43				63[illegible]		
17963	2-22-43	14150	11-20-43				24760	[illegible]8378	
19714	6-12-43	14650	1-22-44					[illegible]6779	766
21790	9-17-43	14750	4-7-44					708000	
23065	10-11-43	7150	6-2-44					[illegible]8592	1796
23554	11-28-43	161	12-9-44					[illegible]4746	
24369	4-5-44	12	4-24-44					[illegible]76	
24509	4-24-44	4	5-9-44					76	
25129	5-17-44	18	5-26-44					479	
25992	6-28-44	6217	8-4-44					[illegible]07976	
24137	3-24-44	7100	8-26-44					[illegible]50748	87072
41867	5-4-44	13800	6-8-44					[illegible]64[illegible]79	
45080	6-16-44	4900	12-12-44						4900
46[illegible]1	[illegible]-24-44	5000	[illegible]					50[illegible]4	5000
46[illegible]3	[illegible]-10-44	5000	[illegible]-27-44					50[illegible]2	
46[illegible]4	[illegible]-10-44	444	[illegible]-11-44				[illegible]5811		
46[illegible]5	[illegible]-11-44	5000	[illegible]-2-45					50[illegible]4	
46[illegible]8	[illegible]-11-44	5000	[illegible]-2-45					76[illegible]6	
46[illegible]9	[illegible]-8-45	5000	[illegible]-8-45					96[illegible]5	
46[illegible]9	[illegible]-7-45	5000	[illegible]-6-45					50[illegible]7	
46[illegible]9	[illegible]-8-45	5000	[illegible]-8-45					50[illegible]7	1000
46[illegible]9	[illegible]-6-45	5000	[illegible]-6-45					50[illegible]6	
47[illegible]9	[illegible]-13-45	64							
47386	[illegible]-7-45	5000							
				97786	183900	180948	233052	981[illegible]6	10[illegible]5

CROSS ITEMS

[illegible]

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Roosevelt Avenue
CHICAGO, ILL.

Customer (Buick

Part No. 26689

SPACER

Purchase Order No.	Date	Quantity	Date of 1st Delivery	2951	2915	2966	1945	Overrun	Cancellations
P-769	9-17-41	50000	7-11-41	49163				837	
P-26894	1-14-42	75446	6-24-42		47503			446	
P-4016	3-17-42	44700	7-2-42		44748			1052	
P-4809	4-18-42	45000	12-31-42			35000			
P-6677	7-15-42	185000	1-14-43			125000			
16799	1-9-43	85000	8-21-43			104175	17444		18500
17894	2-22-43	69000	12-20-43				69000		
18590	4-3-43	20100	1-19-44				20100	719	
19210	6-8-43	4000	1-18-44				4000		
19511	6-18-43	18000	1-18-44				18000		
20107	8-28-43	15000	2-8-44				24200		
21637	10-1-43	40000	—						40000
22049	10-11-43	21000	—						21000
20535	8-17-43	1107000	2-24-44			1077000	65676		61600
23274	11-15-43	4200	2-21-44				4200		
19173	12-6-43	44200	2-21-44				24200		
20044	12-18-43	19000	—				—		
20715	1-15-44	20000	—				—		
21685	10-29-43	20000	—				—		
22496	2-22-44	44000	—				—		
20555	2-10-44	44000	—				—		23000
20879	2-14-44	39100	—				—		44000
24599	4-10-44	26000	—				—		39100
				49163	795113	1504477	918476		26000

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer BUICK — Part Number 23125

SPACER

No.	Date	Quantity	Date Req.	1943	1944	1945	Over Run	Cancelled
P 770	3-17-41	25000	9-5-41	3796 71				
P 3682	1-15-42	38677	7-8-42		4-9976			
P 3654	3-17-42	23114	7-11-42		4579 80			
P 5353	4-18-42	30100	4-18-42		3969 36		Yellow	
P 6138	6-13-42	241290	10-17-42		1246796	1116796		17572
P 6249	7-17-42	188000	Cancelled					
P 15121	10-8-42	140558	Cancelled					
P 16726	1-26-43	86000	7-17-43			5168+94	511694	
P 17619	2-11-43	279158	3-26-43			58[illegible]	[illegible]	
P 19430	6-11-43	61450	7-11-43					
21537	9-7-43	119900	7-16-44			[illegible]		
23719	11-4-43	18651	3-14-44			[illegible]		
24524	10-11-43	125000	6-29-44			[illegible]		
24806	11-19-43	242413	7-21-44			[illegible]		17771
24826	12-12-43	110200	11-7-44			[illegible]		
25028	12-22-43	202011	8-21

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Buick Part No. X0797

PIN SPRING STOP

Purchase Orders No.	Date	Quantity	Date of 1st deliv	Shipments 1941	12-1-41 to 4-30-42	5-27-42 to 11-30-42	1943	1944	1945	Packard	Cancelled
[illegible] 771	3-17-41	50000	6-21-41	477738						3050	
X4425	1-15-42	28704	6-20-42			442485				1795	
4103	3-17-42	20500	6-20-42			398648	51347				
[illegible] 5198	4-18-42	24000	12-29-42				240000				
[illegible] 6869	7-15-42	66100	1-30-43				274439				
15536	10-5-42	20000	8-21-43				151926				
16605	1-8-43	16308	9-27-43				122876	145169			
17774	2-22-43	8500	12-14-43					89904			
19405	6-12-43	50000	2-4-44					80052			10066
21061	8-20-43	22250	4-7-44					89300			
21883	10-11-43	24450	6-29-44					77750			19510
22555	11-26-43	62	11-30-43				915				
24370	4-5-44	100	4-29-44					100			
24730	5-26-44	168	5-29-44					1644			
24943	5-28-44	11707	6-29-44					82652			
24770	5-28-44	24000	7-31-44					172400			
[illegible] 2784	[illegible]	50000	[illegible]					50000

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Fusick Part No. 25856

SHEET OIL PLATE

Purchase Orders No.	Date	Quantity	Date of Last Assy	1942	1943	1944	1945	Previous	Current	Balance
[illegible]	3-[illegible]-41	[illegible]	[illegible]	[illegible]						
[illegible]	1-[illegible]-42	[illegible]	[illegible]							
P 3918	3-[illegible]-42	[illegible]	9-19-42							
P [illegible]	4-3-42	[illegible]	[illegible]							
P [illegible]	4-[illegible]-42	[illegible]	[illegible]							
P 6490	7-[illegible]-42	[illegible]	[illegible]							
15794	10-[illegible]-42	[illegible]	[illegible]							
16784	1-8-43	[illegible]	8-3-43							
17838	[illegible]	[illegible]	8-31-43						1799	
19509	[illegible]	[illegible]	Cancelled						[illegible]	
20116	[illegible]	[illegible]	Cancelled						[illegible]	
[illegible]	9-[illegible]-43	[illegible]	[illegible]							
21658	10-11-43	[illegible]	[illegible]						3004	
23515	[illegible]	[illegible]	[illegible]						1037	
23631	[illegible]	[illegible]	[illegible]							
25191	[illegible]	[illegible]	[illegible]							
[illegible]

AIRCRAFT & DIESEL EQUIPMENT CORP. 3820
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer BUICK

SHAFT SUPER FUEL DRAIN

| | | |

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Buick

Part No. 2460

PLATE Super Fuel Drive VALVE

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Purchase Order No.	Date	Quantity	Date of Inspection	Shipments 1941	1942	1943	1944	Ordered	Ordered
P 777	3-13-41	500	7-31-41	3947 48					
P 1300	1-15-42	6301	6-30-42			3011		1709	
P 3781	3-17-43	4600	10-16-43			4833 33			
AVC P-6376	4-8-43	4600	4-14-43				4600	1667	
AVC P-6566	7-15-43	7500	6-11-43				4380		
7779	1-19-43	14340	8-17-43				4777	1300	
17873	11-11-43	1500	Cancelled				938 50		
Credit				394 48		793 48	1388 98	938 50	
								1393	

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Buick Part No. 39078

Drawing

Purchase Order No.	Date	Quantity	Date of 1st Delv.	Shipments 1941	12-1-41 to 6-30-42	7-1-42 to 12-31-42	1943	1944	1945	Overrun	Cancellations	Balance
781	9-10-41	10000	9-9-41	19500								
2676	1-14-42	11496	6-10-42			9947						
3690	3-17-42	11500	8-28-42			11708				760		
5760	4-21-42	3000	10-29-42				2925					
6776	5-14-42	16000	5-4-43				19651					
16813	1-8-43	11000	8-30-43				11350			50		
17698	2-22-43	16500	10-14-43				4599	30191				
19788	4-14-43	16500	12-9-43					16592				
20798	5-16-43	3000	5-3-44					3000				
21819	7-12-43	16500	4-29-44					17150			1650	
22770	10-10-43	8000	6-29-44					17950			6950	
23790	2-26-44	3000	6-29-44					3050				
24084	3-22-44	3000	7-21-44					6000				
24570	4-14-44	18000	8-21-44					8250	9750			
25978	5-19-44	10000	9-18-44					9726	274			
26426	6-20-44	10000	10-16-44						10000			
27426	7-18-44	10000	11-15-44						9000			1000
28444	8-16-44	10000	12-14-44						8356			1644
29566	9-14-44	10000	1-13-45						7434			2566
30474	10-12-44	10000	2-11-45						6526			3474
31490	11-10-44	10000	3-12-45						5510			4490
32799	12-8-44	10000	4-10-45						4201			5799

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Rosewood Avenue
CHICAGO, ILL.

Customer Dick

Part No. 47799

Plug

Purchase Orders No.	Date	Quantity	Date of 1st Sale	1943	Shipped to 1944	1945	1946	1947	Quantity Completions	Balance
[illegible]	8-10-43	4000	8-7-43	18791	24709					
[illegible]	1-15-44	4000	3-28-44		24677					
[illegible]	3-13-44	6000	3-28-44		17451	27757				
[illegible]	4-18-44	4500	9-29-44			24952			4477	
[illegible]	7-15-44	10200	11-22-44				18881		4500	
17117	1-15-45	6700	9-22-45				24900			
17617	2-22-45	6100	10-22-45				18854			
19807	6-14-45	7000	1-21-46				24784			
20062	8-10-45	7000	3-21-46				25000			
18444	10-18-45	6000	5-23-46				27426		4576	
							27421		4500	
24424	2-28-46	4454	5-23-46				24869			
24119	3-29-46	6000	6-29-46				25000			
24635	4-15-46	6700	8-21-46				25000	21401		
25315	6-5-46	5000	12-1-46					25000		
24970	7-26-46	4100	1-21-47					24900		
25456	8-23-46	4018	4-20-47					24818		
25487	9-28-46	500								
25637	11-4-46	500								
CREDIT MEMO				18791	16591	16591	16591	16591	18804	181
								107		
								16809		

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Dixie

Part No. 37199

Dowel Gun Drive

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| No. | | |

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Lewis
Order No. 37035
Valve service release

| No. | Date | Quantity | Date of Job daily | 2042 | 2044 | 2048 | 2046 | | |

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

15-17

Customer Buick Motor Div Part Number 34224
PIN CRANK SHAFT

Invoice No.	Date	Quantity	Date of Last Delivery	1942	1943	1944	1945	Overrun	Cancellations	Balance
P-783	9-10-41	500	7-31-41	49911				767		
P-2447	1-15-42	6694	5-30-42		59-30					
P-3845	3-17-42	3780	6-10-42		79135	17649				
P-4924	4-21-42	5200	7-28-42			20498				
P-6599	7-15-42	13900	2-25-43			19831				
P-16886	1-15-43	8600	9-2-43			11380				
P-17754	2-22-43	16500	10-21-43			10055			6684	
P-19488	4-12-43	8310	11-20-43			8978	170535			
P-20181	4-28-43	10900	2-17-44				59980		7162	
P-20654	8-20-43	2016	2-29-44				20334			
P-23959	9-11-44	700	9-16-44				3000			
24773	4-15-44	700	4-29-44				4700			
21603	9-29-43	18519	8-21-44				161970		4771	
21340	10-11-43	22203	2-21-44				108044			
24324	4-15-44	6600	11-2-44				8911	60551		
25579	6-8-44	1400	12-20-44					21000		
26292	7-19-44	14	8-31-44				210			
16343 Alt 14313	12-7-44	2700	1-31-45					39000		
30898	12-20-44	600	2-15-45					9000		
31177	1-19-45	400	2-21-45					6000		
29998	2-28-45	16048	3-29-45					141855		6791
24176	3-19-45	200	+					-		
24704	3-30-45	800	+					-		
25771	4-8-45	600	-					-		
				69911		168405	57697	889181	771440	
CREDIT MEMO								2117		
								489370		

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

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Customer Quad Part No. 16479

PIPE O.I. SUCTION FR

Purchase Orders			Date of 1st daily	1941	Shipments 12-1-41 to 4-30-42	5-1-42 to 11-30-42	1943	1944	Overrun	Concealed
No.	Date	Quantity								
P 710	3/3 41	5000	8-14-41	4359					1117	

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Part's No. 79414

Pin Screw Locking

No.	Date	Quan Ship	Date 1st Order	1943	1944	1945	Overrun	Cancellations	Balance
18653	3-15-43	6700	3-29-43						
20237	7-6-43	29995	12-16-43						
21423	9-28-43	19700	3-11-44						
22731	10-12-43	10500	4-4-44						
24399	6-5-44	5000	6-29-44						
25861	8-1-44	100796	9-26-44						
26436	8-23-44	12500	7-21-44						
26717	9-15-44	10700	12-1-44						
28543	11-20-44	5000	2-10-45						
29562	12-9-44	14900							
30056	2-28-45	18790	3-21-45					14900	19716

[fol. 466] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF B. CH. KELLEHER IN RESPECT OF CHEVROLET MOTOR AND AXLE DIVISION OF GENERAL MOTORS CORPORATION—Filed July 2, 1945

B. Ch. Kelleher, being first duly sworn, on oath deposes and says that he is now and has been since June, 1940 President and General Manager of Aircraft & Diesel Equipment Corporation (herein called "Plaintiff").

Affiant further says that:

(1) General Motors Corporation was a customer of Plaintiff from before June, 1940, through Allison Division.

(2) General Motors Corporation employed a system of purchasing whereby integral parts of that corporation made purchases and paid therefor as if much integral parts thereof were separate and independent entities, and that during the period 1941 to 1944 some of such entities were subdivided into other separate and independent entities for [fol. 467] the purpose of buying and paying for purchases as well as other purposes.

(3) Among such entities of General Motors Corporation was a division known and called Chevrolet Motor and Axle Division. This division was divided in the years 1940 to 1944 into Chevrolet Motors Division, Chevrolet Commercial Body Division and Chevrolet Motor and Axle Division. In this affidavit Chevrolet Motor and Axle Division, Chevrolet Commercial Body Division and Chevrolet Motors Division are treated as a unit and are herein called "Chevrolet".

(4) This affidavit relates solely to the relation of the plaintiff to Chevrolet, and is one of a series of affidavits made by this affiant pertaining to the contracts of Plaintiff with purchasers of its equipment.

(5) This affidavit and the supporting exhibits is made in support of Plaintiff's assertion that substantial portions of its sales made in the fiscal years ended November 30, 1942, November 30, 1943, and November 30, 1944 are not subject to renegotiation.

(6) The photostatic copies of the documents attached to this affidavit are all true and correct copies of letters or telegrams sent by Chevrolet to Plaintiff or by Plaintiff to Chevrolet.

(7) The computations attached thereto have been made under the supervision of affiant by auditors furnished by Lybrand, Ross Bros. & Montgomery, Certified Public Accountants, from the books of original entry kept and maintained by Plaintiff in the ordinary course of its business, [fol. 468] and that affiant believes all of said computations to be correct.

(8) In affiant's opinion, Plaintiff had a contract with General Motors Corporation (Chevrolet) for the purchase of aircraft parts on July 19, 1941 and at all times thereafter, and that said contract was not subject to renegotiation by reason of any subsequently enacted statute, and that the basis of such opinion of said affiant is as hereinafter set forth.

(9) Prior to June 19, 1941 Plaintiff had been selling to Chevrolet certain parts for use in aviation engines, and that sometime prior to June 19, 1941, a representative of Chevrolet called upon Plaintiff and requested quotations for the sixteen parts then being furnished by Plaintiff to Buick Motor Division of General Motors Corporation for use in the Pratt & Whitney engine.

(10) On June 19, 1941 Chevrolet wrote Plaintiff requesting a statement of the prices at which said parts were being furnished to Buick Motors Division of General Motors Corporation, a copy of which said letter is attached hereto and marked "Exhibit C-1".

(11) Thereafter, pursuant to said letter of June 19, 1941, on June 19, 1941, this affiant caused to be mailed to Chevrolet a letter of Plaintiff enclosing a statement of the prices at which said sixteen parts were being furnished to Buick Motors Division of General Motors Corporation, a copy of which said letter of June 30, 1941 and the quotations attached to such letter are attached hereto marked "Exhibit C-2" and "Exhibit C-2-A".

[fol. 469] (12) Thereafter on July 19, 1941 Plaintiff received from Chevrolet its letter of July 18 wherein Chevrolet advised Plaintiff of its engine schedule for the year 1942 and the months of January and February of 1943 and thereafter, and requested Plaintiff to advise whether it was in a position to insure delivery of these parts in time for

Chevrolet's requirements. A copy of said letter is attached hereto marked "Exhibit C-3".

(13) Thereafter on July 21, 1941 Plaintiff wrote Chevrolet advising it that the quotations contained in its letter of June 30, 1941 would be considered as binding to December 31, 1931, and increased 10% between January 1, 1942 and June 30, 1942, and 20% between July 1, 1942 and December 1, 1942 on all shipments, a copy of which said letter is attached hereto marked "Exhibit C-4".

(14) On September 12, 1941 Plaintiff wrote to Chevrolet revising its prices as quoted in its letter of June 30, 1941, a copy of which said letter of September 12, 1941 is attached hereto marked "Exhibit C-5".

(15) Thereafter on January 2, 1942 Chevrolet advised Plaintiff that it was preparing to increase the production of the Pratt & Whitney engine which would necessitate the stepping up by Plaintiff of the parts which it was furnishing. An engine schedule was given for the entire year of 1942 and the months of January to April inclusive for the year 1943, and thereafter at the rate of 2000 engines per month. Plaintiff was advised that the parts which Chevrolet was then purchasing from Plaintiff must be stepped up to meet that schedule. In the said letter Plaintiff was also advised and requested to advise as to [fol. 470] whether it could meet the increased schedule. A copy of said letter of January 2, 1942 is attached hereto and marked "Exhibit C-6".

(16) Plaintiff thereafter received from Chevrolet a letter dated March 30, 1942 again advising of an increase in the manufacturing schedule through the year 1942 to the ultimate rate of 3000 engines per month plus spares by June, 1942. It requested Plaintiff to advise as to whether it could meet these requirements (to meet the 3000 engines per month beginning June, 1942). A copy of said letter is attached hereto marked "Exhibit C-7".

(17) Later a letter was received by Plaintiff from Chevrolet, dated April 6, 1942, showing the parts Plaintiff would be required to furnish Chevrolet to handle the 3000 engine per month schedule to be reached in June, 1943. A copy of such letter is attached hereto, made a part hereof and marked "Exhibit C-8". Plaintiff replied to this letter advising Chevrolet that it would meet such schedule, and it did so.

(18) On May 25, 1942 Plaintiff received from Chevrolet a letter setting forth that on March 30, 1942 it had forwarded to Plaintiff a schedule of delivery which Plaintiff had not answered. It enclosed a copy of its letter of March 30, 1942, a copy of which said letter and attached copy is attached hereto and marked "Exhibit C-9".

(19) On June 11, 1942 Plaintiff replied to Chevrolet advising that it would accept said increased schedule and was in a position to meet said schedule.

[fol. 471] (20) Thereafter additional increases were made on some of the parts which Plaintiff was then furnishing to Chevrolet. There have been further increases in said schedules.

(21) Following the receipt of each letter requesting that the production be increased of the parts then being furnished by Plaintiff to Chevrolet, this affiant made or caused to be made a shop survey showing (a) work in production, (b) machinery on hand, and (c) personnel; and made such changes in production schedules as was necessary to insure Plaintiff being able to perform its contract for the parts required by Chevrolet in increasing amounts, as shown by Chevrolet's communications attached hereto; and, that as said increases were made, Chevrolet supplied Plaintiff with material necessary to complete its work in accordance with such increased schedules, and in excess of any so-called purchase orders then received by Plaintiff; that Chevrolet relied upon Plaintiff to supply the parts then being made by Plaintiff for Chevrolet in amounts necessary to meet said increased requirements, as a stipulation of the contract between Plaintiff and Chevrolet.

(22) On or about December 10, 1942, Plaintiff received from Chevrolet its letter with enclosures regarding renegotiation, a copy of which said letter of December 10, 1942, and enclosures are attached hereto marked "Exhibit C-10"; that pursuant to said letter of Chevrolet dated December 10, 1942, Plaintiff signed and returned to Chevrolet a copy of said letter and enclosures.

(23) On December 10, 1942 and at all times prior and subsequent thereto this affiant believed that the sales made [fol. 472] to Chevrolet under the arrangement were not subject to renegotiation, as being sales made upon a contract made prior to April 28, 1942, and that in addition,

affiant was and is informed and he believes that the provision for renegotiation in the Sixth Supplemental Defense Act was and is unconstitutional and void.

(24) In view of his belief in respect of the unconstitutionality of the Sixth Supplemental National Defense Appropriation Act, 1942, he believed and now believes that no renegotiation could be had under or pursuant to the provisions of said Act; that in any event said letter of December 10, 1942, did not authorize, direct or permit renegotiation of any sales made in the year 1943, under the terms and provisions of the Renegotiation Act adopted February 24, 1944.

Further affiant saith not.

B. Ch. Kelleher.

Subscribed and sworn to before me this 29th day of June, 1945. Clyde F. Devin, Notary Public.

[fol. 473] "EXHIBIT C-1"

CHEVROLET-MOTOR AND AXLE

Division of General Motors Corporation
P.O. Station "B," Buffalo, N. Y.

June 19, 1941.

Aircraft & Diesel Equipment Corporation
4401 N. Ravenswood Avenue
Chicago, Illinois

Attention: Mr. L. G. Simmons

Gentlemen:

Relative to your visit of a few days ago regarding the sixteen parts you are now furnishing Buick for the Pratt and Whitney engine, the writer would appreciate it if, for estimating purposes only, you would give us the Buick prices on these parts.

Thank you in advance for your cooperation in this matter.

Yours very truly, W. E. Henderson, Buyer, Purchasing Department.

WEH:vsm

[fol. 474] "EXHIBIT C-2"

June 30, 1941.

Buffalo, New York.—P.O. Station B.
Chevrolet-Motor and Axle,
Attention: Mr. W. E. Henderson—Buyer

Gentlemen:

In response to your letter of June 19, 1941, we are pleased to send you a list of the prices quoted Buick Motor Co. for the parts being made for the Pratt and Whitney engine.

We are sending you these prices to be used for estimating purposes, but will be glad to send you a formal quotation at the time you are ready to place an order.

These prices however do not include tool costs and you would have to secure Buick Company's permission to use their tools. You should be able to do this without any trouble.

We trust the enclosed list will help you in lining up your order and remain

Very truly yours, Aircraft & Diesel Equipment Corporation, L. G. Simmons—Dales Department.

LGS/gn

[fol. 475] "EXHIBIT C-2-A"

Part A-37035—Valve	
Lot 2000 pieces	$ .79 ea.
Part A-24163—Pipe	
Lot 2000 pieces	.17 ea.
Part A-25856—Shaft	
Lot 2000 pieces	.34 ea.
Part A-38899—Dowel	
Lot 4000 pieces	.06 ea.
Part A-26689—Spaces	
Lot 20,000 pieces	.06 ea.
Part A-24160—Plate	
Lot 2000 pieces	.05 ea.
Part A-1177—Insert	
Lot 4000 pieces	.30 ea.
Part A-20495—Body	
Lot 2000 pieces	1.08 ea.
Part A-18350—Plunger	
Lot 2000 pieces	.43 ea.

[fol. 476] Part A-23145—Spacer

"EXHIBIT C-2-A"

Lot 14,000 pieces	$ .08 ea.
Part A-24164—Shaft	
Lot 2000 pieces	.29 ea.
Part A-23365—Pipe	
Lot 8000 pieces	.16 ea.
Part A-16429—Pipe	
Lot 2000 pieces	.05 ea.
Part A-20140—Pipe	
Lot 4000 pieces	.05 ea.
Part A-34224—Pin	
Lot 2000 pieces	.05 ea.
Part A-20297—Pin	
Lot 12,000 pieces	.08 ea.
Part A-47793—Plug	
Lot 2000 pieces	.05 ea.

Customer to furnish, without cost, all material TO AIRCRAFT & DIESEL EQUIPMENT CORPORATION.

All prices are F.O.B., Chicago, Ill. Terms net 10th prox.

[fol. 477]

"EXHIBIT C-3"

CHEVROLET-MOTOR AND AXLE

Division of General Motors Corporation
P.O. Station "B" Buffalo, N. Y.

July 18th, 1941.

Aircraft & Diesel Equipment Corp.
4401 No. Ravenswood Avenue
Chicago, Illinois

Attention: Mr. L. G. Simmons

Gentlemen:

We have now received a tentative schedule of production for the Pratt and Whitney Model 1830-43 Engine. We are listing below parts which we desire to purchase from your company.

Part No.	Part Name	Qty. per Unit
1177	Insert	2
16429	Pipe	1

Part No.	Part Name	Qty. per Unit
20140	Pipe	2
20297	Pin	6
23145	Spacer	7
23365	Pipe	4
24160	Plate	1
24164	Shaft	1
25856	Shaft	1
26689	Spacer	10
34224	Pin	1
37035	Valve	1
39028	Dowel	2
39899	Dowel	2
47793	Plug	1

We will furnish the necessary bar stock for the production of these parts.

Approximate delivery schedule will be on the following basis:—

January	1942	5 engines
February	"	10 "
March	"	15 "
April	"	20 "
[fol. 478] May	1942	25
June	"	30 "
July	"	35 "
August	"	40 "
September	"	50 "
October	"	100 "
November	"	150 "
December	"	300 "
January	1943	600 "
February	"	900 "

Thereafter 1,000 engines per month.

Can you make the necessary arrangements to insure the delivery of these parts to us in time for our requirements?

Your early reply will be greatly appreciated.

Yours truly, R. D. Stuart, Purchasing Agent.

RDS:vsm

[fol. 479] "EXHIBIT C-4"

July 21, 1941.

Chevrolet Motor and Axle,
Division of General Motors Corporation,
Buffalo, New York.

Attn: Mr. R. D. Stuart, Purchasing Agent.

Gentlemen:

This is in answer to your inquiry of July 19th, 1941 about various parts which you want us to provide for you.

We will be glad to work for you and can assure you that if your orders are accepted by us, the delivery dates will be met. This of course is based upon your ability to furnish the material to us in sufficient time for the processing of the several parts.

The prices listed in our letter of June 30, 1941 addressed to the attention of Mr. W. E. Henderson, Buyer, may be accepted by you for all shipments made up to December 31, 1941. These prices are to be increased by 10% on all shipments between January 1, 1942 and June 30, 1942 and by 20% on all shipments between July 1, 1942 and December 31, 1942.

It should be further understood that we will be permitted to make deliveries ahead of schedule if possible. If you decide to use us as a supplier you should submit with your formal orders the date on which your material will be delivered to us in order to give the job as early a routing as possible.

We will be glad to purchase the material ourselves, obtaining the necessary affidavits for you, and charging you with the actual cost of the material plus 15% for handling.

For your information, the following paragraphs are submitted with all quotations:

"All prices are F.O.B. Chicago, Illinois. Terms, Net 10th Approx.

[fol. 480] Delivery promises are based on normal expectancy. Acts or demands of the United States Government,

fires, strikes, accidents to machinery or other causes u
avoidable or beyond our control, or the failure on th
part of the purchaser to supply necessary informatio
shall excuse any delay in delivery or any failure to fi
orders accepted. This quotation and delivery promise i
subject to change which may be scheduled for shop pro
duction if received before this order and also is subjec
to change caused by suppliers change in delivery promise
of material. It supersedes all previous quotations o
agreements.

Cancellation of orders can be made only with our con-
sent and upon terms that will indemnify us against loss.

Any quantity up to 10% in excess of or less than the
quantity ordered will be regarded as completing same.

The cost of any changes in design or specifications re-
quired by the purchaser is chargeable to the purchaser."

Trusting that we have the opportunity of serving you,
we remain

Respectfully yours, Aircraft & Diesel Equipment
Corporation, L. G. Simmons, Sales Manager.

LGS:R

[fol. 481] "EXHIBIT C-5"

September 12, 1941.

Chevrolet Motor and Axle,
Division of General Motors Corporation,
P.O. Station B, Buffalo, New York

Attention: Mr. W. E. Henderson, Buyer
Purchasing Department

Gentlemen:

This will confirm my telephone conversation with you
this afternoon and our telegram to you in which we with-
drew our quotations included in our letter of June 30,
1941.

From our experie'ce in producing these parts for Buick we find that the costs are considerably out of line and that the actual operations necessary to furnish the parts in order to pass inspection are qu[illegible] different from the operations that we felt were necessa[illegible]t the time the original quotations were issued. This additional work and the resulting additional costs make it necessary for us to issue the revised quotations on these parts, as follows:

Part No.	
1177	$34.00 per hundred pieces
16429	6.60 per hundred pieces
20140	7.00 per hundred pieces
20297	14.75 per hundred pieces
23145	10.60 per hundred pieces
23365	24.30 per hundred pieces
24160	5.85 per hundred pieces
24164	38.50 per hundred pieces
25856	41.00 per hundred pieces
26689	7.50 per hundred pieces
34224	13.30 per hundred pieces
39028	8.25 per hundred pieces
39899	9.95 per hundred pieces
47793	12.70 per hundred pieces

All prices are F.O.B. Chicago, Illinois. Terms, Net 10th Approx.

Delivery promises are based on normal expectancy. Acts or demands of the United States Government, fires, [fol. 482] strikes, accidents to machinery or other causes unavoidable, or beyond our control, or the failure on the part of the purchaser to supply necessary information, shall excuse any delay in delivery or any failure to fill orders accepted. This quotation and delivery promise is subject to change which may be caused by orders which are now pending and which may be scheduled for ship production if received before this order, and also is subject to change caused by suppliers change in delivery promises of material. It supersedes all previous quotations or agreements.

Cancellation of orders can be made only with our consent and upon terms that will indemnify us against loss.

Any quantity up to 10% in excess of or less than the quantity ordered will be regarded as completing same.

The cost of any changes in design or specifications required by the purchaser is chargeable to the purchaser.

Trusting that we may have the opportunity of serving you. We are,

Very truly yours, Aircraft & Diesel Equipment Corporation, L. G. Simmons, Sales Manager.

LGS:P

[fol. 483] "EXHIBIT C-6"

CHEVROLET-MOTOR AND AXLE

Division of General Motors Corporation
P.O. Station "B" Buffalo, N. Y.

January 2, 1942

Aircraft & Diesel Equipment Corp.
4401 N. Ravenswood Avenue
Chicago, Illinois

Gentlemen:

We are planning to increase our production of Pratt & Whitney 1830-43 engines which would eventually necessitate the stepping up of our schedules for parts which you are furnishing to us, to an ultimate peak of 2000 engines per month basis.

Delivery requirements of parts from you would be based on the following tentative engine production:

	Engines		Engines		Engines
Jan. 1942	25	July 1942	400	Jan. 1943	1200
Feb.	75	Aug.	500	Feb.	1400
Mar.	125	Sept.	600	Mar.	1600
Apr.	200	Oct.	750	Apr.	1800
May	200	Nov.	900	Thereafter	2000
June	300	Dec.	1050		

At the present time we are purchasing the following parts for this engine from you:

Part No.	Part Name	No. per Engine
177	Insert—Tachometer Drive	2
6429	Pipe	1
0140	Pipe C'Shaft	2
0297	Pin—Spring Stop	6
3145	Spacer—Push Rod	7
3365	Pipe—Crank Pin	4
4160	Plate—Lower Super Charger Drain Valve	1
4164	Shaft—Super Charger Drain Valve	1
5856	Shaft—Oil Pump Idler	1
6689	Spacer	10
4224	Pin—C'Shaft Support Plug Location	1
9028	Dowel	2
9899	Dowel	2
7793	Plug	1
8164	Spacer—Push Rod	49
7035	Valve—Compensating Relief	1
9966	Pipe	1

[fol. 484] We would appreciate a response from you at your earliest convenience to the following questions:

In the event that schedules would be increased as shown, can you assure us of your ability to furnish the increased quantity of all parts?

If your present capacity is not sufficient for such increase would you be inclined to provide the necessary tooling increase to furnish these requirements?

Based on your present capacity and what would be required to raise it to handle our requirements do you feel this can be accomplished in ample time to meet the schedules as indicated?

We request that you give this your full consideration and reply as soon as possible.

Yours very truly, J. A. Condon, Buyer—Purchasing Department.

AC:ILP

[fol. 485] "EXHIBIT C-7"

CHEVROLET-MOTOR AND AXLE
Division of General Motors Corporation

P.O. Station "B" Buffalo, N. Y.

March 30, 1942

Aircraft & Diesel Equipment Corporation
4401 No. Ravenswood Avenue
Chicago, Illinois

Att: Mr. L. G. Simmons

Gentlemen:

We propose to increase our manufacturing schedules of Pratt & Whitney engines to an ultimate of 3,000 engines per month plus spares and to coordinate all facilities for the attainment of this rate by June 1943. As you are now supplying this plant with the following parts, we desire that you make whatever arangements are necessary for accomplishing the production schedules that you will be required to meet.

Part No.	Name	No. Per Engine
20140	Pipe	2
23365	Pipe	4
26689	Spacer	10
34224	Pin	1
39028	Dowel	2
39899	Dowel	2
47793	Plug	1

Anticipated monthly schedules expressed in engines is given below for your guidance:—

April 1942	Approx.	250 Engines per month, plus spares
May	Approx.	400 Engines per month, plus spares
June	Approx.	500 Engines per month, plus spares.
July	Approx.	800 Engines per month, plus spares.
August	Approx.	950 Engines per month, plus spares
September	Approx.	1150 Engines per month, plus spares
October	Approx.	1500 Engines per month, plus spares
November	Approx.	1700 Engines per month, plus spares
December	Approx.	1900 Engines per month, plus spares

Thereafter an increasing monthly rate to 3,000 engines plus spares by June 1943.

[fol. 486] Mr. W. E. Henderson, Aviation Plant #2, Chevrolet Motor Division, Buffalo, N. Y., will advise you with regard to the following parts which you are now supplying for direct shipment to that plant.

Part No.	Name	No. Per Engine
1177	Insert	2
20297	Pin	6
23145	Spacer	7
24160	Plate	1
24164	Shaft	1
25856	Shaft	1
27035	Valve	1
48164	Spacer	49
49966	Pipe	1

Please advise regarding your ability to meet these requirements.

Very truly yours, R. D. Stuart, Purchasing Agent.

JAC/mm

[fol. 487] "EXHIBIT C-8"

Aviation Engine Plant No. 2 Chevrolet Motor Division
General Motors Corporation
Buffalo, New York
1001 East Delavan Avenue

April 6, 1942.

Aircraft & Diesel Equip. Corp.
4401 N. Ravenwood Avenue
Chicago, Ill.
Gentlemen:

Our ultimate monthly schedule of Pratt & Whitney engines has been increased from 2,000 to 3,000 per month plus spares. The 3,000 per month rate will be reached by June 1943.

We are listing below the parts you are now supplying and a figure opposite each part that will be multiplied by the factor opposite each month to determine the amount required for each month.

Will you kindly advise if you will be able to handle this increase?

Part No.	Name	Figure
#1177	Insert	222
20297	Spring	639
23145	Spacer	765
24160	Plate	113
24164	Shaft	113
25856	Shaft	115
37035	Valve	110
48164	Spacer	5342
49966	Pipe	1060

April —1942	Factor 2.5	September—1942	Factor 11.5
May —1942	Factor 4.	October —1942	Factor 15.
June —1942	Factor 5.	November—1942	Factor 17.
July —1942	Factor 8.	December—1942	Factor 19.
August—1942	Factor 9.5		

Thereafter, an increasing monthly rate to a factor of 30 by June 1943.

Yours very truly, Aviation Engine Plant #2, Chevrolet Motor Division, W. E. Henderson, Purchasing Agent.

WEH/mk

[fol. 488] "EXHIBIT C-9"

CHEVROLET-MOTOR AND AXLE
Division of General Motors Corporation
P.O. Station "B" Buffalo, N. Y.

May 25, 1942.

Aircraft & Diesel Equipment Corporation
4401 N. Ravenswood Avenue
Chicago, Ill.

Att: Mr. L. G. Simmons

Gentlemen:

The attached letter which we sent you on March 30th it is apparent from our files, has not been replied to. We would appreciate very much an expression of your intention to prepare to meet our ultimate engine schedules as covered by this letter.

Thanking you for an early reply, we remain,

Very truly yours, J. A. Condon, Asst. Purchasing Agent.

JAC/mm
Encl-2

[fol. 489] March 30, 1942.

Aircraft & Diesel Equipment Corporation
4401 N. Ravenswood Avenue
Chicago, Illinois

Att: Mr. L. G. Simmons

Gentlemen:

We propose to increase our manufacturing schedules of Pratt & Whitney engines to an ultimate rate of 3,000 engines per month plus spares and to coordinate all facilities for the attainment of this rate by June 1943. As you are now supplying this plant with the following parts, we desire that you make whatever arrangements are necessary for accomplishing the production schedules that you will be required to meet.

Part No.	Name	No. Per Engine
20140	Pipe	2
23365	Pipe	4
20689	Spacer	10
34224	Pin	1
39028	Dowel	2
39899	Dowel	2
47793	Plug	1

Anticipated monthly schedules expressed in engines is given below for your guidance:—

April 1942	Approx. 250 Engines per Month, Plus Spares
May	Approx. 400 Engines per Month, Plus Spares
June	Approx. 560 Engines per Month, Plus Spares
July	Approx. 800 Engines per Month, Plus Spares
August	Approx. 950 Engines per Month, Plus Spares
September	Approx. 1150 Engines per Month, Plus Spares
October	Approx. 1500 Engines per Month, Plus Spares
November	Approx. 1700 Engines per Month, Plus Spares
December	Approx. 1900 Engines per Month, Plus Spares

Thereafter an increasing monthly rate to 3,000 engines plus spares.

Please advise regarding your ability to meet these requirements.

Very truly yours, R. D. Stuart

[fol. 490] "EXHIBIT C-10"

CHEVROLET-MOTOR AND AXLE
Division of General Motors Corporation
P.O. Station "B" Buffalo, N. Y.

December 10, 1942.

Aircraft & Diesel Equipment Corp.
4401 N. Ravenswood Avenue
Chicago, Ill.
Gentlemen:

This is to advise you that the Government prime contracts listed below have been issued to Chevrolet Motor Division, General Motors Corporation and are subject to renegotiation as set forth in the Sixth Supplemental National Defense Appropriation Act approved April 28, 1942.

Contract No: W-535-AC-19997(5210)
Contract No: W-535-AC-24931
Contract No: W-535-AC-29294
Contract No: W-535-AC-35325(9485)

In order that we may comply with the provisions of each of the above Government contracts, it is necessary that we request you to agree that the Renegotiation Agreement attached hereto, marked Chevrolet Form No. AV-408, is

applicable to and a part of all purchase orders issued to you by Chevrolet Motor & Axle Division, Chevrolet Motor Division, General Motors Corporation, and shall be applicable to and a part of all purchase orders hereafter to be issued to you by Chevrolet Motor & Axle Division which purchase orders show or may show any one or more of the above contract numbers and equal or exceed an amount of $100,000.

In order that we may secure your acceptance to the above understanding, it is requested that you sign and return to us one copy of the Renegotiation Agreement attached hereto, retaining the duplicate copy for your file.

Very truly yours, R. D. Stuart, Purchasing Agent.

JAC/U

CHEVROLET-MOTOR AND AXLE
Division of General Motors Corporation
P.O. Station "B" Buffalo, N.Y.

Chev. Form No. AV 408

RENEGOTIATION AGREEMENT

ARTICLE:- Renegotiation Pursuant to Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942.

It is agreed by and between General Motors Corporation, Chevrolet Motor & Axle Division, hereinafter referred to as Buyer and Aircraft & Diesel Equipment Corporation, hereinafter referred to as Seller, that the following understanding is hereby made a part of all purchase orders issued to you by General Motors Corporation, Chevrolet Motor & Axle Division applying on all Government contracts as follows:

Contract No. W-535 AC 19997 (5219)
Contract No. W-535 AC 24931
Contract No. W-535 AC 29294
Contract No. W-535 AC 35325 (9485)

1. Upon the written demand of the Secretary, at such period or periods when, in the judgment of the Secretary, the profits accruing to seller, under this contract can be determined with reasonable certainty, the Secretary and seller, will renegotiate the contract price to eliminate therefrom any amount found as a result of such renegotiation to represent excessive profits. The demand of the Secretary shall fix a place for renegotiation and a time for the commencement thereof not later than one year after the date of completion or termination of this contract as found by the Secretary.

2. Seller will furnish to the Secretary such statements of actual costs of production and such other financial statements, at such times and in such form and detail as the Secretary may prescribe, and will permit such audits and inspections of its books and records as the Secretary may request.

3. Any amount of the contract price found as a result of such renegotiation to represent excessive profits shall, as directed by the Secretary,

(a) Be deducted by buyer from payments otherwise due to seller under this contract, or
(b) Be paid by seller directly to the Government.

4. Seller agrees that buyer shall not be liable to seller for or on account of any amount paid to the Government by seller or deducted by buyer from payments otherwise due under this contract, pursuant to directions from the Secretary in accordance with the provisions of this Article. Under its contract with the Government, buyer is obligated to pay or credit to the Government all amounts withheld by it from seller hereunder.

5. As used in this Article:

(a) The term Secretary means the Secretary of War or any duly authorized representative of the Secretary, including the contracting officer,

(b) The terms "renegotiate" and "renegotiation" have the same meaning as in Section 403 (b) of the Sixth Supplemental National Defense Apprppriation Act, 1942.

(c) The term "this contract" means this contract as modified from time to time.

GENERAL MOTORS CORPORATION
Chevrolet Motor & Axle Division

By (Signed) J.C.A. Condon
Asst. Purchasing Agent

Accepted this 29th day of December, 1942
AIRCRAFT & DIESEL EQUIPMENT CORPORATION

By (Signed) T.J. Murphy
T. J. Murphy, Comptroller

Title _____

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Chevrolet Motors Division
RECAP - SALES.

Part No	Model and Order	Description	SHIPMENTS 11-1-42 to 11-30-42	12-1-42 to 12-31-42	Nov 30 1942	Nov 30 1943	May 31 1944	Total	SHIPMENTS ON ORDERS RECEIVED Prior to Jan 1 1942	Jan 1 to June 30 1942	1942	Total	Orders Pending Dec 31 1942
1173	TA 24	Journal Tailshaft Brg	3060	4856	1497614			1719470	308070	976550		1284620	191690
11350	PA 1375	Plunger			190640			190640					190640
20140	TA 24	Pipe Crank Adapt	5760	4752	1202560			1644512	87304	1120976		1208280	436232
20197	TA 24	Pipe Spring Stop	14760	18768	796968			2011437	447744	670752		1118496	892941
23185	TA 24	Spacer	17760	13200	1228248			1659192	439704	1279488		1719192	960000
23265	TA 24	Pipe Crank Pin	15120	17760	1254864			1677744	345168	1332576		1677744	771432
24160	TA 24	Plate Lower Support Changer Drain Valve	1680	1440	97920			209520	91680	70800		162480	47040
24164	TA 24	Shaft	6720	6480	376320			1344240	274032	1040208		1314240	29998
27256	TA 24	Shaft Oil Pump Idler	6720	3840	384000			1276320	91611	1184709		1276320	1000000
26689	TA 24	Spacer	9180	5280	1098240			1468320	348037	1120283		1468320	769991
34424	TA 24	Fly Crank Adapt Support Plug Locating	1680	1080	69120			161760	10560	151200		161760	6912
37035	TA 24	Valve	2760	720	141120			309360	91680	217679	1680	311039	1679
37048	TA 24	Dowel	6960	1680	672000			1552800	360480	1192320	1680	1554480	1680
38889	TA 24	Dowel	2880	6720	252000			667680	55200	612480		667680	1680
47793	TA 24	Plug	1440	2640	168960			403200	120960	276240	4800	402000	1200
48154	TA 24	Spacer	9240	12720	1247520			3151440	1141920	1969920	9600	3121440	30000
49614	BA 144	Pipe	1200	1200	96000			192000					192000
79414	7826930	Ball Bearing											
			39915	78937	2196944			5759435	3915171	4757639	78183	8750993	5959435

Customer Chevrolet

4401 Ravenswood Avenue
CHICAGO, ILL.

Job's No. 1177

2 of 17

No.			Date of Last Order					Location of Order Card	Pieces Over-run	Pieces Cancelled	Part Number Also Listed
TA-25	9-19-41	2800	1-26-42		95200						201409 202979
BA-149	11-21-41	4200	2-7-42		142800						202979
BA-176	3-16-42	3500	3-16-42		98090	20910					202979
BA-1241	1-30-42	7825	5-20-42			245250			216		202979
BA-1241	5-8-42	4700	10-27-42			159800					241607
BA-9016	6-15-42	34600	11-21-42			159256	1012044				
BA-15707	1-22-43	6775	9-28-43				230360				202979
BA-24830	8-23-43	4793	2-29-44					32406			
BA-15757	2-27-43	20000	10-29-43				258970	458116	37025		
					336090	565410	1577864	784224			

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Chevrolet

Part No. 18350

3 of 19

Purchase Order No.	Date of P.O.	Quantity	Date of Del. Req'd	1941	1942	1943	1944	Location of order card	Pieces every run	Pieces cancellation	Part Number Also Listed
BA 9175	12-7-42	5000	1-8-43			383760					
BA 15745	2-2-43	5000	3-19-43			377840					
BA 15757	2-27-43	25000	7-20-43			1129640	501936			5339	
TA 37226	1-29-44	8839	1-25-44				214776	2029T			
BA 24830	8-23	3500								3500	24164 25856
						1910640					

Customer Chevrolet

Automotive & Diesel Equipment Corp.
4401 Ravenswood Avenue
CHICAGO, ILL.

Part No. 20140

Purchase Order No.	Date	Quantity	Date of 1st Delivery	1941	Shipments 1942	1943	1944	Location of order card	Pieces over-run	Pieces cancellation	Part number as Listed
TA-170	11-26-41	4200	2-18-42		2940 00						23365-
TA-1324	2-18-42	500	2-18-42		350 00						23365-
TA-1457	1-19-42	3200	2-18-42		2240 00						23365-
TA-30099	2-16-42	7500	3-14-42		1240 4	400 96					23365-
TA-30411	5-4-42	4800	11-21-42			192 64	1433 6				23365-4
TA-32775	7-4-42	33000	11-17-42			39 76	8702 4			20000	
33408	7-29-42	1900	3-31-43				1322 3				
TA 33677	8-22-42	20000	4-3-43				1400 00				
TA 34255	10-6-42	4300	5-15-43				201 77				
TA 34256	10-6-42	2700	6-24-43				189 00				
TA 32775	11-17-42	568	11-17-42			39 76					23365-4
TA 35036	1-6-43	10000	6-28-43				709 58				
TA 30963	2-24-43	28500	10-4-43				1556 17	44555			
TA 32331	6-29-43	18000	2-10-44					9100 0		5000	
TA 35753	8-21-43	15000	4-19-44					10500 0			
TA 25	9-19-41	2800	2-6-42		196 00				1177		
TA 33408	7-29-42	1900							25856	1900	
					8730 4	673 12	5302 35				

5719

Customer Chevrolet

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Part No. 20297

											Location of Kardex card	Pieces every-run cancellations	Part Number Also Listed
BA-9090	8-18-42	12000	12-31-42					1770 00					18350 4
BA-15757	2-27-43	9000	10-11-43					1327 50					
15897	6-17-43	11000	10-15-43					1622 50					
BA 24830	8-23-43	21095	11-18-43					5856	1772 72				
BA 29082	1-13-44	29600	3-16-44						2368 00				
TA 25	9-19-41	8900	1-26-42		1312 75						1177		
BA 149	11-21-41	12100	1-31-41		1597 74		1625 01				1177		
BA 176	1-12-42	9100	4-30-42				1342 25				1177		
BA 1121	1-30-42	21050	5-7-42				3104 88				1177		
BA 15707	1-22-43	15250	1-26-43					1898 18			1177		
BA 9016	6-15-42	39600	10-24-42				3343 68	2497 32			2416 0		
					1472 49		9415 82	9696 06					

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

(.) Customer Chevrolet

Order No. 23145

6-9

									Pieces over-run	Pieces Cancellation	Part Number Also Listed
TA-25	9-19-41	9800	2-9-42		1038 80						23315-24160-24164
BA-149	11-21-41	14700	3-9-42		1404 5	141775					24160
BA-176	1-12-42	11700	4-29-42			124020					24160 & 24164
BA-1121	1-30-42	28050	5-22-42			215530					24160
15952	5-19-42	17500	5-29-42			185500					
32774	7-8-42	112000	7-16-42			272929	19 1267				
TA 33204	7-13-42	4800	11-4-42			50880			68000		
TA 33678	7-31-42	68000	7-31-43				729974				
TA 34346	10-7-42	25500	11-7-42			291394					
TA 34347	10-7-42	4500	8-31-43				28759		1990		
34788	11-21-42	307000	9-9-43				3254728				
TA 34876	12-8-42	45000	11-22-43				477000				
TA 31139	2-27-43	329500	11-21-43				810296	1603273			
TA 34787	3-29-43	309500	3-25-43				3284505		40		
TA 32078	5-7-43	84000	5-15-43				11178				
TA 32309	6-29-43	53000						2389500			
TA 31593	8-26-43	9200	4-9-43				84475				
					1179 25	1332028	8872382				

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Chevrolet Part No. 23365

Purchase Order No.	Date	Quantity	Date of 1st Ship	Shipments 1941	1-1-42 to 4-30-42	5-1-42 to 11-30-42	1943	1944	Location of order card	Pieces over-run	Pieces cancellation	Part Number ALSO Listed
											41000	
TA 32846	7-6-42	67000	10-13-42			568304	65853					
TA 33672	8-25-42	41000	3-22-43				776096					
TA 34012	9-12-42	11500	7-29-43				279451					
TA 34013	9-12-42	3000	8-12-43				72900					
TA 34135	9-23-42	90000	8-26-43				813208					
TA 34131	9-23-42	10000	11-20-43				243000					
TA 31102	2-26-43	47000	11-23-43				330 72	831981				
TA 32898	5-20-43	4000	6-2-43				145800					
TA 32238	6-5-43	3200	6-16-43				77760					
TA 32307	6-8-43	4100	6-19-43				2 32 55 1482 30					
TA 32310	6-29-43	25000	2-23-44					527184				
TA 35929	8-28-43	23000	4-15-44					190556				
TA 170	11-26-41	8500	2-28-42		206550				20140			
TA 1324	12-27-41	900	3-2-42		21870				20140			
TA 1457	1-19-42	6000	3-9-42		145800				20140			
TA 30099	2-16-42	14500	9-11-42		7241	345109			20140			
TA 30471	5-4-42	10000	10-13-42			243000			20140			
P.O. 32346	11-17-42	188	11-17-42			4568			20140			
TA 25	9-19-41	5600	2-9-42		139798				23145	153		
TA 33467	7-29-42	3800	3-20-43				92340		23365			
					521259	592677	2523855					

AIRCRAFT DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Chevrolet Part No. 24160 9-19

Order No.	Date	Quantity	Del'd Last Order	1941	Shipped 1942	1943	1944
BA-9016	6-15-42	17000	10-6-42		99450		
BA-9090	8-15-42	600	11-28-42		3510		
BA-15849	5-8-43	10000	5-24-43			65216	
P 86808	3-24-44	2000					
BA 1241	5-8-42	2400	10-3-42		15900		
TA 25	9-19-41	1500	1-12-42	11115			
BA 149	11-21-41	2000	1-12-42	11700			
BA 176	1-12-42	1850	3-13-42	8576	2246		
BA 1121	1-20-42	3700	7-30-42		21645		
				31391	142751	65216	

Location of Order Card Pieces — Every-Run Cancellation

Part Number Also Listed		
20297		
41647	97035	

1148		
	200a	
1177		
23145	400	
23145		
23145		
23145		

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Chevrolet — Date Rec'd 24164

9 Pj 19

No.	Date	Amount	Date Shipped	1942	1943	1944	1945	1946	Location of order card	Pieces Ordered-Run	Pieces Cancellation	Part Number Also Listed
BA-149	11-21-41	2000	3-31-42		770 00							25858
BA-1122	1-30-42	3700	6-6-42			1424 50						25855 37935 49946
BA-1241	5-8-42	2400	11-21-42			924 00						25856 7
BA-9016	6-15-42	17000	11-28-42			9713	5559 89					3703557
BA 15707	1-22-43	2500	10-6-43				962 50					
BA 15757	2-27-43	12000	10-29-43				6302 50	1753 75			2738	25850
29178	1-24-44	4100	-								4100	
BA 24830	8-23-43	3250									3250	
TA 25	9-19-41	1500	2-7-42		577 50				1835			
									2314 5			
BA 176	1-12-42	1850	4-28-42		32 23	679 53			2314 5			
BA 9090	8-15-42	500	10-6-43				192 50		2416 0			
					1379 23	3999 39	9673 86					

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Chevrolet Part No. 2585L

Purchase Order No.	Date	Quantity	Date Shipped	2042	2043	2045	2046	Location of Pieces on order card over-run Cancellation	Part Number Also Listed
TA 25	9-19-41	1500	2-11-42		615.00				24689, 34224, 37035-7
BA 175	1-12-42	2000	3-27-42		820.00				37035-7
TA 32773	7-4-42	19800	10-28-42			936.85	2666.64	11000	
TA 33402	7-29-42	1300	6-30-43				533.00		22140-7
BA 9103	8-19-42	2000	10-31-42			384.58	435.42		
TA 33713	8-22-42	11000	6-30-43				4479.25		
TA 34257	10-6-42	800	10-14-43				328.00		
TA 34258	10-6-42	1200	10-14-43				492.00		
TA 34257	10-6-42	800							24689
TA 34256	10-6-42	1200						1200	22-897-7
24829	8-23-43	2050	4-24-44				1291.50		37035-7
BA 24830	8-23-43	3400						3400	
BA 149	11-21-41	2000	3-13-42		820.00				
BA 1122	1-20-42	3750	3-31-42		1221.39	316.11			
BA 1241	5-8-42	2350	10-21-42			975.80			
BA 15757	2-27-43	10000	10-16-43				2602.27	2301.39	
					3476.39	2613.34	11536.58		

24689, 34224, 37035-7
37035-7
11000
22140-7
24689
22-897-7
37035-7
1200
3400
18550
24164
24164
24164
24164
30

Customer Chevrolet — UNIVERSAL DIESEL EQUIPMENT CORP. 1401 Havenswood Avenue CHICAGO, ILL. — Part No. 26689 — 11 1 2

Purchase Order No.	Date	Quantity	Date of 1st Rely	Shipments 1941	1942	1943	1944	Location of order card	Pieces Every-Run Cancellation	Part Number Also Listed
TA 170	11-26-41	19500	1-23-42	14625						
TA 1324	12-27-41	1500	1-26-42	1125						34224?
TA 1457	1-19-42	15000	4-25-42	4463	6813					
TA 30699	2-16-42	37000	4-30-42		27750					34224?, 39028
TA 30471	5-4-42	24000	11-11-42		1258	16329				34224?
TA 32826	7-9-42	154000	3-6-43			44662			97000	
TA 33508	8-13-42	21500	4-29-43			16125				
TA 33675	8-25-42	97000	5-27-43			72773				
TA 34257	10-6-42	29000	9-13-43			21750				
TA 34258	10-6-42	25000	10-7-43			18750				
TA 35638	1-6-43	12000	10-29-43			9000				
TA 35639	1-6-43	22000	10-29-43			16500				
TA 31108	2-26-43	139000	11-6-43			52806	41188			
TA 32458	7-5-43	144000	1-20-44				86400			
TA 25	9-19-41	15500	1-17-42	11625					25856	
TA 34257	10-6-42	29000							25856	
TA 34258	10-6-42	25000							25856	
				31813	35822	248606				

Customer Electronic [illegible] JUIPMENT CORP. Part No. 34-24

4401 Evenerwood Avenue
CHICAGO, ILL.

Purchase Order No.	Date	Quantity	Date of 1st Delivery	Shipped 1941	1942	1943	1944	Location of Order Card	Pieces over-run	Pieces Cancellation	Part Number Used
TA - 170	11-26-41	1800	2-22-42		10175	13765					39028
TA - 1457	1-19-42	1750	5-29-42			23275					39028, 39897, 47793
152360	6-20-42	129	7-8-42			1716					
TA 32763	7-3-42	22000	2-28-43				133080			12000	
TA 33512	8-13-42	800	5-29-43				10640				
TA 33717	8-24-42	12000	5-31-43				204617				
TA 35042	1-6-43	10000	9-21-43				21000				
TA 31112	2-26-43	11300	9-22-43				237300				
TA 32099	5-20-43	1535	5-29-43				20416				
TA 32549	7-5-43	18500	11-18-43				242556	364245			
TA 25	9-19-41	1790	1-31-42		22610				25856		
TA 1324	12-27-41	758	5-29-42			9975			24689		
TA 30099	2-16-42	3800	8-8-42			50540			24689		
TA 30471	5-4-42	2500	8-8-42			31428	18224		24689		
					32785	130699	653050				

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Customer Chevrolet — UNIVERSAL ... EQUIPMENT CORP. 4853 Ravenswood Avenue CHICAGO, ILL. — Part No. 3703F

													Location of Order Card	Pieces over-run	Pieces Cancellation	Part Number Also Listed
																49966
BA	149	11-21-41	2000	3-24-42			158000			189600						
BA	1241	5-8-42	2400	12-24-42						551924						1770
BA	15723	1-25-43	7000	8-12-43						162582	1796406				4300	
BA	15757	2-27-43	14000	11-11-43							4250					
	24836	8-23-43	4350	3-31-44						346801			24160			
BA	9090	8-18-42	4500	6-25-43						67782		1	24164			
BA	1122	1-30-42	3600	4-16-42			216302		316	1128168			24164			
BA	9016	6-15-42	14300	1-6-43									25856			
TA	25	9-19-41	1500	2-10-42			118500						25856			
BA	175	1-12-42	1700	4-7-42			134300				65100		25856			
	24829	8-23-43	700	3-31-44						29467						
	45235	?	?	?						790						
	45472	?	?	?												
							627102		316	2471214						

Customer Chevrolet — 4401 Lakewood Avenue, CHICAGO, ILL. — Part No. 39028 — 14-79

No.	Date	Quantity	Date Ship.					Location of order card	Pieces every run cancellation	Part Number Also Listed
TA- 25	9-19-41	2960	1-30-42		239 25					39899; 47793; 48144
TA - 1399	1-12-42	500	2- 7-42		41 25				17000	39899; 47793
TA -32764	7- 3-42	16000	3-25-43			330 01				
TA 33716	8-24-42	12000	7-15-43			990 01				
TA 35041	1- 6-43	1000	10-22-43			84 50				
TA 32199	6-29-43	6000	10-22-43			495 00				
TA 35538	8- 9-43	17400	11-29-43			849	1536 48			
TA 36843	12-14-43	1400	3-30-44				126 00			
36996	1-22-44	14000	3-30-44				1260 00			
TB 30099	2-16-42	7500	4-25-42		81 59	44 95	484 68	24689		
TA 170	11-26-41	4100	1-30-42		338 75			34724		
TA 1457	1-19-42	3100	2- 7-42		255 75			34224		
					956 09	44 95	2392 69	2912 48		

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Chevrolet — Date 15 Aug 19 — Order No. 39879

No.	Date	Amount Ord	Date of Last Order	2nd	2nd	2nd	2nd	2nd	Location of Order Card	Pieces over-run	Pieces cancellation	Part Number Also Listed
TA - 170	4-26-41	4100	1-22-42		407 95							47793
TA - 30099	2-16-42	7500	7-16-47			746 25						47793
TA - 32765	7-3-42	33000	7-31-47			6587	1227 62				20000	
TA 33548	8-13-42	700	7-10-43				196 5					
33714	8-22-42	20000	7-10-43				1789 77					
TA 34266	10-6-42	400	10-29-43				59 70					
TA 34265	10-6-42	400	10-29-43				38 80					
TA 31141	2-27-43	15800	10-29-43				1196 79	46878				
TA 20471	5-4-42	5000	7-23-42			497 50						
TA 32548	7-3-43	28000	12-31-43					28000 00				
TA 1457	1-19-42	3100	4-20-42		242 18	66 27			34224			
TA 25	9-19-41	3700	1-17-47		328 45				39028	401		
TA 1399	1-12-42	500	1-22-42		49 75				39028			
					1028 33	1375 89	4683 75					

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Chevrolet

Part No. 47793

16 of 19

Purchase Order No.	Date	Quantity	Date of 1st Delivery	1941	Shipments 12-7-41 to 6-25-42	6-26-42 to 11-28-42	1943	1944	Location of order card over-run cancellation	Pieces	Part Number Also Listed
TA-32827	7-4-42	8000	3-30-43				82273			1500	
TA-33407	7-29-42	800	8-17-43				10160				23365-4
TA-36624	8-25-42	1500	9-18-43				19050				
TA-31138	2-27-43	1000	9-22-43				12700				
TA-32198	6-29-43	4000	9-22-43				50800				
TA-35539	8-9-43	8300	11-27-43				12421	51289			
TA-36998	1-21-44	[illegible]000	3-25-44					49000			
TA-1457	1-19-42	[illegible]50	3-14-42		21082				34224	10	
TA-25	9-19-41	[illegible]00	1-22-42		19050				39028		
TA-1399	1-12-42	250	3-14-42		3175				39028		
TA-170	11-26-41	2000	1-22-42		25400				39899		
TA 30099	2-16-42	3700	3-20-42		3620	41034	2337		39899		
					72327	41034	189741				

AIRCRAFT & DIESEL EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Customer Chevrolet — Order No. 48164 — 17 Jly 19

No.	Date	Quantity	Date Order Filled	1942	1943	1944	1945	1946	Location of Order Card	Pieces Convey-Yu n	Pieces Cancellations	Part Number Also Used
BA-149	11-21-41	103200	4-18-42		3588 82	549278						44964
BA-175	1-12-42	81000	7-31-42			712800						
BA-1122	1-30-42	174850	9-26-42			864063	662796					
TA-15952	5-19-42	122500	6-10-43				1077062					
TA-32828	7-4-42	77,000	7-15-43				2439960				470000	
TA-33202	7-13-42	36000	10-23-43				317600					
TA-33673	8-25-42	47,000									470000	
TA-34209	10-6-42	33000									33000	
TA-34266	10-6-42	37000									37000	
TA-34787	11-24-42	507,000	12-9-42				2988375				309970	Transferred to part 28194
TA-34875	12-9-42	79000	11-11-43				411001					
TA-31140	2-27-43	327000	11-30-43				69766	1659028				
TA-25	9-19-41	68300	2-10-42		601040				39028			
					959922	2126141	8371060					

Customer Crucible

[illegible] EQUIPMENT CORP.
4401 Ravenswood Avenue
CHICAGO, ILL.

Part No. A-49966

18 19

Purchase Order No.	Date	Quantity	Date of 1st Deliv.	Shipments 1942	1943	1944	1945	1946	Location of Order Card	Pieces over-run cancellation	Part Number Also Listed
82376	6-12-42	14800	8-22-42			7617	43179				
82590	7-27-42	3008	5-8-43				19619				
82625	8-28-42	2395	5-10-43				15807				
82767	11-7-42	6714	6-14-43				44268				
83419	1-2-43	1679	9-2-43				11079				
83600	2-22-43	8896	9-2-43				58815				
84016	7-10-43	10287	11-4-43				18413	53527			
84407	7-28-43	9153	3-6-44					73224			
BA 1122	1-30-42	3500	2-18-42		23100					74164	
BA 149	11-21-41	3500	2-9-42		23100					37035	
BA 175	1-12-42	1500	2-18-42		9900					48164	
					56100	7617	211171	126748			

[illegible] EQUIPMENT CORP
4401 Ravenswood Avenue
CHICAGO, ILL.

19-19

Customer Chevrolet

Part No. 79414

Purchase Order No.	Date	Quantity	Ship Date	194[illegible]	[illegible]	1945	1946	Pieces over 5 yrs. Cancellation	Also Listed
TA-36923	1-8-44	21000	1-31-44				210000		
TA-37352	2-29-44	2700	5-9-44				27000		
							237000		

[fol. 511] In United States District Court

[Title omitted]

[File endorsement omitted.]

Affidavit of B. Ch. Kelleher in respect of General Motors Corporation (Allison Division) — Filed July 2, 1945.

B. Ch. Kelleher, being first duly sworn, on oath deposes and says that he is now and has been since June, 1940 the President and General Manager of Aircraft & Diesel Equipment Corporation; that this affidavit pertains only to the relations of Aircraft & Diesel Equipment Corporation (herein called "Plaintiff") with the Allison Engineering Division of General Motors Corporation (herein called "Allison"); that this is one of a series of affidavits made by this affiant pertaining to the contracts of Plaintiff with purchasers of its equipment, and this affidavit and the exhibits attached hereto are made in support of the position of Plaintiff that a substantial portion of its sales made in the fiscal years ended November 30, 1942 and November 30, 1943 are not subject to renegotiation.

[fol. 512] Affiant states that:

(1) The photostatic copies of documents attached to this affidavit are all true and correct copies of letters or telegrams sent by Allison to Plaintiff or by Plaintiff to Allison; that the computation attached hereto and made a part hereof, marked "Exhibit A-X", has been made, under the supervision of affiant, by auditors furnished by Lybrand, Ross Bros. & Montgomery, Certified Public Accountants, from the books of original entry kept and maintained by plaintiff in the ordinary course of business, and that affiant believes all of said computation to be correct.

(2) In affiant's opinion Plaintiff had a contract with Allison for the purchase of aircraft parts on January 13, 1942, and that at all times thereafter; that said contract was not subject to renegotiation by reason of any subsequently enacted statute; and that the basis of said opinion is as hereinafter set forth.

(3) Prior to December 10, 1940 Plaintiff had been selling to Allison certain parts for use in aviation engines upon orders placed for such parts and pursuant to ship-

ping schedules furnished to Plaintiff by Allison as is shown by the letter of December 6, 1940 and the schedule attached thereto, copies of which are attached hereto, marked "Exhibit A-1" and "Exhibit A-1-A"; and the reply of Plaintiff to Allison dated December 10, 1940, a copy of which is attached hereto and marked "Exhibit A-2".

(4) Thereafter, during the year 1941 and prior to December 10, 1941, the Plaintiff continued to manufacture various parts for aviation engines for Allison after making quotations upon said parts and having the same accepted by Allison.

(5) On December 10, 1942, Plaintiff received a telegram [fol. 513] from Allison advising that under orders of the War Department Allison was required to increase its production and to immediately commence operation on a twenty-four hour day, seven day week basis. Plaintiff was directed by Allison to do the same, i.e., commence operation on a twenty-four hour day, seven day week basis, in order to insure delivery of the parts necessary to meet its schedules. A copy of such telegram dated December 10, 1941 is attached hereto and marked "Exhibit A-3". Immediately upon receipt of said telegram dated December 10, 1941 Plaintiff telegraphed to Allison advising it that pursuant to its telegram, Plaintiff would operate on a twenty-four hour day, seven day week basis, starting December 11, 1941, and that Plaintiff was ready to cooperate to the best of its ability with Allison; a copy of which said telegram dated December 11, 1941 is attached hereto and marked "Exhibit A-3-A".

(6) Thereafter on January 12, 1942 Plaintiff received a letter from Allison advising Plaintiff that the Air Corps (United States Army) required Allison to materially increase production of Allison Liquid Air-cooled Aircraft Engines. Plaintiff was directed to survey its production facilities and give the data requested as to delivery schedules on the parts which Plaintiff was then making for Allison, a copy of which said letter from Allison to Plaintiff, dated January 12, 1942, is attached hereto and marked "Exhibit A-4", together with the carbon copy of said schedule received and enclosed with the Allison letter.

(7) On January 13, 1942, following receipt of said letter from Allison, Plaintiff advised Allison that in answer to [fol. 514] its said inquiry dated January 12, 1942, it had

studied said schedule, and it was prepared to produce the quantities shown in columns one and two of such schedule, which were necessary to insure Allison fulfillment of its requirements, a copy of which said letter of Plaintiff to Allison, dated January 13, 1942, is marked "Exhibit A-5" and made a part hereof.

(8) On or about March 6, 1942 Plaintiff received from Allison its letter of March 6, 1942, requesting information on the attached questionnaire relative to the facilities of Plaintiff to insure delivery of the quantity of parts that Allison would be required to meet on a monthly schedule, a copy of which said letter is attached hereto and marked "Exhibit A-6".

(9) Thereafter, on March 10, 1942, Plaintiff acknowledged said letter and advised that it was prepared to meet the schedule as set forth.

(10) Thereafter, on or about August 24, 1942, Plaintiff received a letter from Allison dated August 24, 1942 giving a new schedule of parts requirements then being manufactured by Plaintiff for Allison, which letter requested an acknowledgement of the fact that Plaintiff would be able to maintain the shipping schedule on the parts therein mentioned, a copy of which said letter is attached hereto and marked "Exhibit A-7" and made a part hereof.

(11) Thereafter Plaintiff, by letter, advised Allison of its ability to meet the increased requirements provided materials were received from the American Brass Com-[fol. 515] pany by September 5, 1942, a copy of which letter is attached hereto and marked "Exhibit A-8", and made a part hereof.

(12) Thereafter on or about October 15, 1942, Plaintiff received from Allison its letter of October 15, 1942, again requesting information as to the ability of Plaintiff to produce the quantities required on a monthly basis, a copy of which said letter is attached hereto, made a part hereof, and marked "Exhibit A-9".

(13) Thereafter on October 19, 1942, Plaintiff replied to said letter (Exhibit A-9), advising Allison that it was complying with the schedule of production, and that it was prepared to take care of Allison's requirements.

(14) Thereafter on December 8, 1942, Plaintiff received from Allison a further letter requesting confirmation of its ability to meet shipping schedules of the parts then being

manufactured by Plaintiff for Allison, in order to permit Allison to maintain its schedule, a copy of which said letter, dated December 8, 1942, is attached hereto, made a part hereof, and marked "Exhibit A-10".

(15) Upon receipt of said letter (Exhibit A-10) Plaintiff advised Allison, by letter dated December 9, 1942, copy of which is attached hereto, made a part hereof, and marked "Exhibit A-11", that it had reviewed its facilities for the production of Allison's parts and was prepared to produce at the peak figures set out in its letter of December 8, 1942, and was able to maintain said schedules.

(16) Folowing receipt of said telegram of December 10, 1941 (Exhibit A-3), and following each wire and letter [fol. 516] or telephone call thereafter, giving the increase of the schedules of parts then being made by Plaintiff, this affiant made, or caused to be made, a shop survey showing work in production, prior orders, machinery on hand, and available skilled personnel, and made such changes in production schedules, machinery and personnel as was necessary to insure Plaintiff's performance of its contract with Allison for the parts then being manufactured for Allison in the increased amounts and in accordance with schedules furnished by Allison.

(17) Allison relied upon Plaintiff to supply the parts then being made for Allison in the amounts necessary to meet all increased requirements, and all as a part of said contract of January 13, 1942, with the increased amounts only.

(18) On or about July 25, 1942, Plaintiff received from Allison a notice addressed to all vendors, stating that the sales made by Plaintiff as a subcontractor were subject to renegotiation under the Sixth Supplemental National Defense Appropriation Act, a copy of which said notice is attached hereto and marked "Exhibit A-12"; that pursuant to Allison's letter Plaintiff signed and returned to Allison the agreement requested, a copy of which is not now available; that on July 25, 1942, and at all times prior and subsequent to that date, this affiant believes that the sales made to Allison under the arrangement aforesaid were not subject to renegotiation, since they were all sales on a contract made prior to April 28, 1942.

(19) In addition, affiant was informed and believes that the terms and provisions for renegotiation appearing in

the Sixth Supplemental National Defense Appropriations [fol. 517] Act of 1942, as such, were and are unconstitutional, null and void, and in view thereof, no renegotiation could be had on or pursuant to said Act; and, that in any event said letter of July 25, 1942 did not authorize, direct or permit renegotiation of any sales made in the year 1943 under the terms and provisions of the Renegotiation Act of February 24, 1944.

Further affiant saith not.

B. Ch. Kelleher.

Subscribed and sworn to before me this 29th day of June, 1945.

Clyde F. Devin, Notary Public.

[fol. 518] "EXHIBIT A-1"

ALLISON ENGINEERING COMPANY
Division of General Motors Corporation
Indianapolis, Indiana

December 6, 1940.

Diesel Equipment Corp.
4401 Ravenswood Avenue
Chicago, Ill.

Gentlemen:

We are attaching hereto our shipping schedule #9 on which we have listed all orders placed with your company on which we show a quantity due. On all orders against which you have made a partial shipment, we have shown the quantity still oweing us after consideration of the invoice bearing the date shown in the column "Date of Last Invoice".

It is essential that you check these orders and quantities advising us of any discrepancy as we are now in the process of setting up new records and for us to intelligently calculate our future requirements, it is extremely necessary that your records and ours be in exact accord.

Thanking you for your cooperation, we are,

Yours very truly, R. H. Ross, Follow-up Department.

RHR/mlr
Enc. (1)

(Here follows 1 photolithograph, side folio 519.)

3421

SHIPPING SCHEDULE
See note below.

ALLISON DIVISION
General Motors Corporation
P.O. Box 894, Indianapolis, Indiana

Diesel Equipment Corporation
4401 North Ravenswood Avenue
Chicago, Illinois

Date 12-6-40 Sch. No. 9

Actual Schedule for December

Tentative Schedule for January

Part No. or Material Size	Purchase Order No.	Quantity	Date of Last Inv.	Period Schedule Week Beginning 12-9	Period Schedule Week Beginning 12-16	Period Schedule Week Beginning 12-23	Period Schedule Week Beginning 12-30	Period Tentative Schedule Week Beginning 1-6	Period Tentative Schedule Week Beginning 1-13	Period Tentative Schedule Week Beginning 1-20	Period Tentative Schedule Week Beginning 1-27	Balance Not Specified
33473	14234	7 591	11/11	4 000	3 591							
	22751	19 000			-	4 000	3 000	4 000	4 000	4 000		
33620	23065	3 000		3 000								
36337	22753	1 800		800	1 000							
37146	22755	2 527	12/3	1 527	1 000							
37612	22756	3 688	12/3	2 000	1 688							
33397	28891	2 000						500	500	500	500	

Note

1 You are authorized to purchase raw material only to the extent of our orders which are to be fabricated and supplied in accordance with our formal release.

2 This release supercedes all previous instructions and will be effective until further schedules are issued.

3 Material must be shipped in accordance with this release. Overshipments or undershipments on purchase orders and releases will not be a accepted unless mutually agreed upon.

4 Material returned for credit on account of rejections is not for replacement, but may be shipped after re-operation and applied against release in effect if original quantity on order is not overshipped.

5 Retain this release for your files. Acknowledge promptly. In event of error or misunderstanding, communicate with us immediately.

Address your reply to

ALLISON DIVISION

Follow Up Department

Form 311

REC'D December 10, 1940

[fol. 520] "EXHIBIT A-2"

December 10, 1940.

Allison Division,
General Motors Corp.
P.O. Box #894
Indianapolis, Ind.

Attention: Mr. R. H. Ross, Follow-up Dept.

Gentlemen:

We acknowledge receipt of your schedule #9 dated December 6th, 1940 covering your December and January schedules.

We will ship as follows:—

Part #	P.O. No.	Quantity due 12/10/40	Last shipment	Will Ship in Dec.
33473	14234	7,391	11/11/40	12,000 minimum
33473	22751	19000	.....	starting 12/14/40
33620	23065	2782	12/5/40	2782
36337	22753	1800	.....	1800
37146	22755	730	12/9/40	750
37612	22756	2662	12/6/40	2052
33397	23691	2000	.....	Ship Jan.

In reviewing the above you will note that we will meet your requirements on all items and assure you our best possible cooperation on expediting your orders as per your schedule requirements.

Yours very truly, Aircraft & Diesel Equipment Corporation, Carl H. Vaupei, Sales Manager.

CHV:bd

[fol. 521] "EXHIBIT A-3"

1941 Dec. 10 PM 8 54

NDA 1052 126 NT-WUX Indianapolis Ind 30
Aircraft and Diesel Equipment Corp:
4401 North Ravenswood Ave. Chgo.

We have been instructed by the War Department to increase the manufacture of munitions by going at once to a twenty — day seven days a week. And you are hereby directed to do the same. Please advise us at once the man hours per week and number of shifts per day under which

you are now operating on our parts and how long it will take to step up to the basis above indicated. It is contemplated that the increased hours will add to the cost of the work you are doing. However you are to proceed at once to carry out the order and advise us immediately what effect there will be on cost so the same can be negotiated and agreed upon.

Cruzan Allison Division GMC.

[fol. 522] "EXHIBIT A-30"

December 11, 1941.

Allison Division,
General Motors Corporation,
Mr. Cruzan,
Indianapolis, Ind.

Retel twenty four hour day seven days starting today ready to cooperate to the best of our ability.

Aircraft & Diesel Equipment Corporation, B. Ch. Kelleher, Pres.

[fol. 523] "EXHIBIT A-4"

ALLISON DIVISION
General Motors Corporation
Indianapolis, Indiana

January 12, 1942.

Aircraft & Diesel Equipment Co.
4401 North Ravenswood Avenue
Chicago, Illinois
Gentlemen:

We have been requested by the Air Corps to materially increase our production of Allison Liquid Cooled Aircraft engines and in order to give them an accurate answer quickly, we are asking you to go over your production facilities and give us the data requested on the attached schedule of parts you are now making for us.

On this schedule, we have shown the production requirements in 2 or 4 columns. We would like to have informa-

tion on how soon you can produce the quantities in each column.

Should you find it necessary to increase your machine tools or other manufacturing facilities, please write us in detail what this expansion might be and how soon you can get ready to produce the quantities as shown, especially those shown in columns 2, 3 or 4.

This list is furnished to you in duplicate and we are asking that you return one copy to us immediately with the desired information.

We are asking that you give this your immediate attention so that we may give the Air Corps the desired information.

Very truly yours, Allison Division, General Motors Corporation, B. L. Cruzan.

BLC/em

(Here follows 1 photolithograph, side folio 524.)

SUPPLIER: Aircraft & Diesel Equipment Co.

ADDRESS: Chicago, Illinois

Part No.	Name	Col. 1	Col. 2	Col. 3	Col. 4	REMARKS
19222	Cap-Gun Sync. Gen. Dr.	250	250			
33598	Sleeve-Backfire Sc. Rivet	3800	4700			
36337	Retainer-Rear Br. Screen	1600	2000			
37399	Body-Vent 1/2 pipe thr.	1500	1900			
37612	Washer-Distrib. Finger Dr.	3100	3800			

We can start producing monthly quantities shown in:

Column 1 By: ~~immediately~~ February 1, 1942

Column 2 By: ~~immediately~~

Column 3 By:

Column 4 By:

If additional explanation is required, please advise us in detail in separate letter.

ALLISON DIVISION GENERAL MOTORS CORP.

Date January 12, 1942 Signed: _____

[fol. 525] "EXHIBIT A-5"

January 13, 1942.

Allison Division,
General Motors Corporation,
Indianapolis, Ind.

Attention—Mr. B. L. Cruzan

Gentlemen:

In answer to your inquiry of January 12, 1942, we are please' to enclose herewith schedule which we have filled in to show that we can produce the quantities shown in columns 1 and 2, monthly starting February 1, 1942.

We will not require any additional machine tools or other manufacturing facilities.

Very truly yours, Aircraft & Diesel Equipment Corporation, B. Ch. Kelleher, President.

BChK:M

[fol. 526] "EXHIBIT A-6"

ALLISON DIVISION
General Motors Corporation
Indianapolis, Indiana

March 6, 1942.

Diesel Equipment Company
Chicago, Illinois
Gentlemen:

For immediate revision of our engine production schedule, we must again ask you to give us information requested on attached questionnaire concerning your facilities for delivering the quantities of parts we will require to meet the monthly schedule.

Please give this your immediate attention, wiring us in as much detail as possible and confirm later.

If unable to consider the entire quantities shown, advise your peak monthly quantities with present facilities and state machine tool requirements of additions are necessary.

Very truly yours, Allision Division, General Motors Corporation, B. L. Cruzan.

BLC:eb

[fol. 527] "EXHIBIT A-7"

ALLISON DIVISION
General Motors Corporation
Indianapolis, Ind.
In reply refer to P. J. Messick

August 24, 1942.

Aircraft & Diesel Equipment Corp.
4401 N. Ravenswood Avenue
Chicago, Illinois

Attention: Mr. Kelleher

Gentlemen:

We wish to thank you for the cooperation you have given Mr. Worland in the past. Your account has been assigned to Mr. P. J. Messick who will handle it in the future.

Referring to our shipping schedule number 8 dated 8/12/42 please amend the schedule with our recent orders to read as follows:

	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Bal.
Order No. B33849—Dated 8/19/42 on 1,300 pieces of Part #41536	100	100	100	300	300	300	100
Order No. B33848—Dated 8/19/42 on 1,950 pieces of Part #41505							1950
Order No. B33847—Dated 8/19/42 on 51,500 pieces of Part #37612		5400	5700	7800	7800	7800	27000
Order No. B33418—Dated 8/17/42 on 23,500 pieces of Part #36337			2000	3800	3800	3800	10100

Please acknowledge the fact that you will be able to maintain the above shipping schedule on parts mentioned.

Thanking you in advance for your cooperation.

Yours very truly, C. M. Jessup, Manager, Material Procurement Division, Frank J. Giorganni, Supt. Material Control.

PJM:cc

[fol. 528] "EXHIBIT A-8"

September 5, 1942.

Attn: Mr. F. J. Giorganni, Supt. Material Control
Allison Division
General Motors Corporation
Indianapolis, Indiana

Gentlemen:

This is in answer to your letter of recent date regarding the status of your orders.

P. O. No.	Part	Quantity	
10918	37612	11,755	Material on hand will be delivered as per schedule.
33847	37612	51,500	Order for material placed with Republic Steel. Delivery promise not yet received.
10095	36337	4,206	Delivery of material promised for 9/8
33418	36337	23,500	
33849	41536	1,300	Material delivery promised for 9/5.
17512	41505	2,700	Material for parts.

41653 ring, 41649 valve; 41652 spring, 40517 plug on hand 44' of material 41519 nut on hand which is sufficient for about 50% of order, not yet able to place order for the balance. Material for 40516 body has been on order with American Brass since April, present indications are that delivery *may* be made this month.

If we receive the material from American Brass by September 15th, 1942, we believe that your requirements will be met in accordance with your schedule.

Very truly yours, Aircraft & Diesel Equipment Corporation, B. Ch. Kelleher, President.

BChK:rf

[fol. 529] "EXHIBIT A-9"

ALLISON DIVISION
General Motors Corporation
Indianapolis, Indiana
In reply refer to C. J. Kelly

October 15, 1942.

Aircraft & Diesel Equipment Co.
4401 North Ravenswood Avenue
Chicago, Illinois
Gentlemen:

We are attaching to this letter two copies of surveys made by us as regards our requirements of parts you have been manufacturing for us.

We ask that you kindly make a thorough investigation of your facilities to produce these parts in quantities shown and indicate on the original copy, which is to be returned to us, in the space provided headed columns 1, 2 and 3, just how soon these quantities can be produced by you on a *monthly* basis.

If additional facilities are required by you to produce the quantities indicated in the three different columns, advise us in a separate letter the facilities required for each and every part number separately.

We ask that you please give the attached survey your closest attention and give us the information in detail as it pertains to producing each item on the list in accordance with the quantities indicated.

We ask you please handle this matter as promptly as you possibly can, so to insure its return to the writer's attention at the very earliest possible moment.

Yours very truly, C. M. Jessup, Manager, Materiel Procurement Division, Purchasing Agent.

jl
Enc. (2)

(Here follows - photolithograph, side folio 530.)

SUPPLIER Aircraft & Diesel Equipment Co.
ADDRESS 4401 N. Ravenswood Avenue
Chicago, Illinois

PART NO.	NAME	COL. 1	COL. 2	COL. 3	COL. 4	REMARKS
36337	Rotainer	2784	2784	3144		
37612	Washer	8682	8682	10326		
41505	Valve Assem.	1650	2178	2672		
41536	Plug	1562	1562	1738		
41654	Cap	2310	2310	2860		
41709	Jet	1430	1430	1513		

We can start producing monthly quantities shown in:

Column 1 By: _____

Column 2 By: _____

Column 3 By: _____

Column 4 By: _____

If additional explanation is required, please advise us in detail in separate letter.

ALLISON DIVISION, GENERAL MOTORS CORP.

Date _____ Signed _____

[fol. 531] Supplier: Aircraft & Diesel Equipment Corp.

Address: Chicago, Ill.

Part No.		Col. 1	Col. 2
33598	Sleeve-Backfire Screen Rivet	9200	12,300
36337	Retainer-Rear Breather Screen	2300	3,100
37612	Washer-Distr. Finger Dr.	4000	5,300

We can start producing monthly quantities shown in: Column 1 by: April 1942. Column 2 by April 1, 1942.

[fol. 532] October 19, 1942.

Allison Division
General Motors Corporation
Indianapolis, Indiana

Attention: Mr. C. J. Kelly

Gentlemen:

In accordance with request contained in your letter of October 15, 1942, we are returning herewith schedule of production of your parts on which we have indicated that we shall be able to take care of your requirements.

Trusting that will answer your questions, we are

Yours very truly, Aircraft & Diesel Equipment Corporation, L. G. Simmons, Sales Manager.

LGS:mgt
Enc.

[fol. 533] "EXHIBIT A-10"

ALLISON DIVISION
General Motors Corporation
Indianapolis, Indiana
In reply refer to C. J. Kelly

December 8, 1942.

Aircraft & Diesel Equipment Company
4401 N. Ravenswood Avenue
Chicago, Illinois

Gentlemen:

We are listing in this letter the parts which you are now manufacturing for us. You will note that the following list is in two different columns, namely; Column 1 to apply during the first few months of 1943, and the increase to Column 2 to be gradual, month by month, until the peak figures of Column 2 are reached, possibly about July or August of 1943:

Part Number	Column 1	Column 2
36337	2088	3062
37612	5009	9524
41505	297	2178
41536	213	1562
41654	330	2310

The above list is not in any way to be construed as a schedule but is being given you so that production facilities can be planned and checked carefully so that your facilities will be in agreement with the above list. Shipment will be expected in quantities as shown on our official schedule mailed to you by our Materiel Control Department.

We would like very much for you to inspect this list carefully and advise us if you have the necessary production capacity and/or facilities to produce the peak figures shown on the above list. In other words, these are the amounts that we expect you to produce for us, and if you know of anything, after carefully checking your facilities, that will prevent you from proceeding along the lines in-

dicated on this list, kindly see that we are advised immediately.

Yours very truly, C. M. Jessup, Manager, Materiel Procurement Division, C. J. Kelly, Purchasing Agent.

[fol. 534] "EXHIBIT A-11"

December 9, 1942.

Allison Division
General Motors Corporation
Indianapolis, Indiana

Attention Mr. C. J. Kelly, Purchasing Agent

Gentlemen:

Reference is made to your letter of December 8, 1942. We have carefully reviewed our facilities for the production of your parts and, as a result thereof, believe that we shall be able to produce the peak figures as set out in your letter—at least at the present writing we can not foresee anything that might prevent this and we can assure you that we will use our utmost endeavor to so serve you.

Yours very truly, Aircraft & Diesel Equipment Corporation, T. J. Murphy, Comptroller.

TJM:mgt

[fol. 535] "EXHIBIT A-12"

ALLISON DIVISION
General Motors Corporation

July 25, 1942.

To all Vendors:

Subject: Renegotiation Provisions of Sixth Supplemental National Defense Appropriation Act, 1942 (Section 403 (a) of Public Law 528, 77th Congress, Approved April 28, 1942.

Your attention is directed to the above article which is now made a part of our government contracts and which

provides for renegotiation of prices by and between the government and the contractor.

It also requires that all subcontractors participating in the contract to the extent of $100,000.00 or more be made subject to the same provisions of the act as it applies to renegotiation of prices and elimination of excess profit.

You are requested to acknowledge your acceptance of the conditions imposed upon you as a subcontractor by signing and returning to us promptly the agreement below.

C. M. Jessup, Manager, Materiel Procurement Division, C. H. Verborg, Purchasing Agent.